

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 2****Office of the Secretary of the Interior****43 CFR Part 49****Bureau of Land Management****43 CFR Part 8360****Fish and Wildlife Service****50 CFR Part 27**

[Docket NPS–2016–0003; FWS–93261, FXRS12630900000, FF09R81000, 167; BOR–RR83530000, 190R5065C6, RX.59389832. 1009676; BLM–19X.LLW0240000.L10500000. PC0000.LXSIPALE0000; NPS–GPO Deposit Account 4311H2]

RIN 1093–AA25

**Paleontological Resources Preservation**

**AGENCY:** Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service; Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of the Interior (DOI or Department) is promulgating this regulation under the Paleontological Resources Preservation Act. This regulation provides for the management, preservation, and protection of paleontological resources on lands administered by the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, and the U.S. Fish and Wildlife Service, and ensures that these federally owned resources are available for present and future generations to enjoy as part of America's national heritage. The regulation addresses the management, collection, and curation of paleontological resources from Federal lands using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data. The regulation details the processes related to the civil and criminal penalties for illegal collecting, damaging, otherwise altering or defacing, or selling paleontological resources.

**DATES:** This regulation is effective September 1, 2022. Submit comments on the information collection requirements of this final regulation on or before September 1, 2022.

**ADDRESSES:** The comments received on the proposed rule are available on <http://www.regulations.gov> in Docket ID: NPS–2016–0003. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this rule to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Departmental Information Collection Clearance Officer, Office of the Secretary/Office of the Chief Information Officer, 1849 C Street NW, Washington, DC 20240. Please reference OMB Control Number 1093–0008 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Julia F. Brunner, Geologic Resources Division, National Park Service, by telephone: (303) 969–2012 or email: [Julia\\_F\\_Brunner@nps.gov](mailto:Julia_F_Brunner@nps.gov). Persons who use a telecommunications device for deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:****Background**

The Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) have long managed, protected, and preserved fossils under various legal authorities as a nonrenewable resource with scientific and educational value. For example, all four bureaus have required a permit for fossil collection (the exception is BLM, which has allowed collection of common plant and invertebrate fossils in certain areas without a permit); required fossils collected under permit to be curated in accordance with DOI museum management standards; protected fossils from theft and vandalism; and closed areas to fossil collection as appropriate for protection or other management reasons.

However, the laws and regulations under which the bureaus have managed, protected, and curated fossils have not always been clearly understood or uniformly implemented (see, e.g., Congressional Research Service Report for Congress, *Fossils on Federal Lands: Current Federal Laws and Regulations* (1998)). To address this concern, the

Senate Interior Appropriations Subcommittee in 1999 requested that DOI, the U.S. Department of Agriculture (USDA) Forest Service (FS), and the Smithsonian Institution prepare a report on fossil resource management on Federal lands (see Sen. Rep. 105–227, at 60 (1998)). The request directed these entities to analyze (1) the need for a unified Federal policy for the collection, storage, and preservation of fossils; (2) the need for standards that would maximize the availability of fossils for scientific study; and (3) the effectiveness of current methods for storing and preserving fossils collected from Federal lands. During the course of preparing the report, the agencies held a public meeting to gather public input. The DOI published its report to Congress, “Assessment of Fossil Management of Federal and Indian Lands,” in May 2000.

After the report was released, a bill reflecting what is now the Paleontological Resources Preservation Act (PRPA) was introduced in the 107th Congress. PRPA was modeled after the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa–470mm), and emphasized the recommendations and guiding principles in the May 2000 report. Lawmakers reintroduced the bill in subsequent Congresses through the 111th Congress when it was included as a subtitle in the Omnibus Public Land Management Act, which became law on March 30, 2009. Legislative history demonstrates that PRPA (16 U.S.C. 470aaa–470aaa–11) was enacted to preserve paleontological resources for current and future generations because these resources are non-renewable and are an irreplaceable part of America's heritage. PRPA requires that implementation be coordinated between the Secretaries of the Interior and Agriculture (16 U.S.C. 470aaa–1).

**Previous Federal Actions**

The USDA and the DOI formed an interagency coordination team (ICT) in April 2009 to draft proposed regulations. Members of the ICT included paleontologists, program leads, and regulatory specialists from the USDA's Forest Service and the affected DOI bureaus: the BLM, Reclamation, NPS, and FWS. The Forest Service published a proposed regulation on May 23, 2013 (78 FR 30810) for a 60-day comment period and then published a final regulation on April 17, 2015 (80 FR 21588). DOI published a proposed regulation (RIN 1093–AA16) on December 7, 2016 (81 FR 88173), also for a 60-day comment period. The public comment period ended on

February 6, 2017. The Department of the Interior withdrew the rulemaking action from the Spring 2017 Unified Agenda of Regulatory and Deregulatory Actions to allow the Department to assess the action further. DOI determined rulemaking was appropriate and included the rulemaking on the Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions, under the current RIN.

### Final Rule

This rule establishes unified DOI regulations for the management of paleontological resources on Federal lands under the jurisdiction of the Secretary of the Interior, and administered by BLM, Reclamation, NPS, and FWS. The rule amends title 43 of the Code of Federal Regulations (CFR) by adding a new part 49 entitled “Paleontological Resources Preservation.” In accordance with 16 U.S.C. 470aaa–1, the rule outlines how the four bureaus manage, protect, and preserve paleontological resources on Federal land using scientific principles and expertise. This rule makes conforming amendments to 36 CFR part 2, 43 CFR part 8360, and 50 CFR part 27 to update the authority citation and reference the newly established part 49 of title 43.

The following presents a summary of subparts A through I of the final regulation, followed by responses to public comments received. For a more detailed discussion and a section-by-section analysis of subparts A through I, refer to the proposed rule (81 FR 88173, December 7, 2016).

### Subpart A—Preserving, Managing, and Protecting Paleontological Resources

Subpart A of the final regulation (43 CFR 49.1 through 49.40) implements several provisions of the Act, including 16 U.S.C. 470aaa, 470aaa–1, 470aaa–2, 470aaa–8, 470aaa–9, and 470aaa–10. This subpart explains the scope of the rule (§ 49.1); contains definitions of key terms used in the regulation (§ 49.5); clarifies that this rule does not supplant other laws and regulations that authorize the bureaus to preserve, manage, and protect paleontological resources on and from Federal lands (§ 49.10); explains the locations and situations in which this rule does not apply (§ 49.15); explains that the regulation does not create new rights or entitlements (§ 49.20); explains when confidentiality of information about specific localities of paleontological resources is required (§ 49.25); describes how the bureaus will conduct inventory, monitoring, and preservation activities (§ 49.30); describes how the

bureaus will foster public education and awareness (§ 49.35); and explains the circumstances in which the bureaus may restrict access or collection (§ 49.40).

### Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

Subpart B of the final regulation (43 CFR 49.100 through 49.145) implements the permitting provisions at 16 U.S.C. 6304 of the Act. This subpart specifies when a permit is required to collect paleontological resources from Federal land (§ 49.100); describes who may receive a permit (§ 49.105); describes permit applicant qualification requirements (§ 49.110); explains where to file permit applications and the required content (§ 49.115); sets out how bureaus make decisions about permit applications (§ 49.120); describes the terms and conditions required for permits (§ 49.125); explains when and how a permit may be modified, suspended, revoked or cancelled (§ 49.130); states that permit-related decisions are appealable (§ 49.135); sets forth the permit appeal process (§ 49.140); and states that OMB has approved the information collection provisions in this regulation (§ 49.145).

### Subpart C—Management of Paleontological Resource Collections

Subpart C of the final regulation (43 CFR 49.200 through 49.215) implements section 6305 of the Act (16 U.S.C. 470aaa–4). This subpart requires paleontological resources collected under the final regulation to be deposited into an approved repository (§ 49.200); lists the criteria for approval of a repository (§ 49.205); lists the requirements for agreements between bureaus and approved repositories (§ 49.210); and describes the standards for management of collections made under the final regulations (§ 49.215).

### Subpart D—Prohibited Acts

Subpart D of the final regulation contains one section (43 CFR 49.300). For public notice and clarity, this subpart restates section 6306 of the Act (16 U.S.C. 470aaa–5).

### Subpart E—Criminal Penalties

Subpart E of the final regulation implements section 6306 of the Act (16 U.S.C. 470aaa–5). Subpart E contains one section, 43 CFR 49.400, which describes the criminal penalties applicable to persons who knowingly commit or counsel, solicit, or employ another person to commit any of the prohibited acts described in subpart D. Bureaus may also utilize other

authorities to issue citations for criminal violations involving paleontological resources.

### Subpart F—Civil Penalties

Subpart F of the final regulation (43 CFR 49.500 through 49.575) implements section 6307 of the Act (16 U.S.C. 470aaa–6), and sets forth the process and requirements for the assessment of a civil penalty upon a person who commits one of the actions prohibited by subpart D. This subpart describes when a civil penalty may be assessed (§ 49.500); explains that the first step of the process is issuance of a notice of violation (§ 49.505); describes the contents of the notice of violation, including a proposed assessment of civil penalty (§ 49.510); explains how a person may object to the notice of violation (§ 49.515); explains the timing of a final assessment of civil penalty (§ 49.520); describes how the proposed and final assessments of civil penalty are calculated (§ 49.525); describes the service and contents of a final assessment of civil penalty (§ 49.530); sets forth the person's options for responding to the final assessment of civil penalty (§ 49.535); describes the procedures for a hearing, if requested, at the Departmental Cases Hearings Division (§ 49.540); describes the contents of the administrative law judge's decision, if there is one (§ 49.545); describes how that decision may be appealed (§ 49.550); explains the procedures governing such an appeal (§ 49.555); sets forth the deadlines for payment of the civil penalty (§ 49.560); explains when a person assessed a civil penalty may seek judicial review (§ 49.565); explains the consequences of failing to pay the civil penalty (§ 49.570); and describes the uses for collected civil penalties (§ 49.575).

### Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

The purpose of subpart G (43 CFR 49.600 through 49.610) of the final regulation is to establish the factors used to determine the level of criminal penalties that will be imposed under subpart E and the amount of civil penalties that will be imposed under subpart F of the final regulations. Subpart G, which implements sections 6306(c) and 6307(a)(2) of the Act (16 U.S.C. 470aaa–5(c) and 470aaa–6(a)(2)), does not apply to other management aspects of paleontological resources under the final regulation and the Act. This subpart describes how scientific value is determined for criminal and civil penalties (§ 49.600); describes how commercial value is determined for

criminal and civil penalties (§ 49.605); and describes how the cost of response, restoration, and repair is determined for criminal and civil penalties (§ 49.610).

#### **Subpart H—Forfeiture and Rewards**

The purpose of subpart H (43 CFR 49.700 and 49.705) is to implement section 6308 of the Act (16 U.S.C. 470aaa–7). This subpart explains how forfeiture of paleontological resources that are related to a violation of the Act and the final regulation may take place (§ 49.700); and explains how rewards for information leading to a finding of civil violation or criminal conviction are to be determined and distributed (§ 49.705).

#### **Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

The purpose of subpart I (43 CFR 49.800 through 49.810) is to implement casual collection as authorized by sections 6301(1) and 6304(a)(2) of the Act (16 U.S.C. 470aaa(1) and 470aaa–3(a)(2)). This subpart clarifies that casual collecting is not allowed on lands administered by NPS or FWS (§ 49.800); describes where casual collecting is allowed on lands administered by BLM and Reclamation (§ 49.805); and defines the parameters of casual collecting (§ 49.810).

#### **Summary of Public Comments**

During the public comment period, DOI received 466 comment submissions containing 1,611 separate comments. DOI received comments from amateur collectors, professional academic paleontologists, repository managers, paleontology consultants, and students. Sixty percent (60%) of the comments received by DOI addressed subpart I (casual collection). Twelve percent (12%) of the comments addressed subpart B (permitting). Eight percent (8%) addressed subpart A (management). Five percent (5%) of the comments addressed subpart C (curation). DOI received fewer comments on the remaining subparts. Most comments were helpful and constructive. DOI was not able to address those comments that criticized regulatory provisions required by the Act. However, each comment received consideration in the development of the final rule.

The following discussion addresses substantive information provided during the comment period, by topic, and includes a table that lists substantive changes that the bureaus made in the final rule based on

comment analysis and other considerations.

#### **General Comments**

This section summarizes DOI's response to public comments that did not relate to a particular section of the proposed DOI regulations.

*1. Comment:* Many commenters stated that Congress should appropriate enough funds for the bureaus to hire more paleontologists to implement the regulations and the Act.

*Bureau response:* The bureaus will work with Congress as appropriate to identify and allocate the resources needed to carry out the provisions of the Act and the final regulations. The bureaus will also continue to foster partnerships with amateur paleontologists, local communities, and scientists in order to enhance the bureaus' capacity to preserve, manage, and protect these nonrenewable resources.

*2. Comment:* Any plans, procedures, policies, and agreements developed by each bureau following promulgation of the regulations should be coordinated and standardized among the bureaus. Bureau national offices, rather than individual field offices, should establish any agreements with repositories.

*Bureau response:* The bureaus agree with the comment and intend to standardize their processes to the maximum extent practicable. The bureaus do not believe it is necessary for the regulation to require national rather than field offices to establish agreements with repositories.

*3. Comment:* The discretion reflected in the regulations may lead to inconsistent actions across DOI lands, introducing confusion for permittees and repositories.

*Bureau response:* The discretion reflected in the regulation is reasonable and affords the bureaus the flexibility needed to accommodate differing resources, issues, and areas. The bureaus will be as transparent as possible in the implementation of the regulations in order to reduce potential confusion on the part of the public.

#### **Comments Related to Specific Sections of the Rule**

##### **Subpart A—Preserving, Managing, and Protecting Paleontological Resources**

*4. Comment:* Several commenters stated that the term “preservation” necessitates collection of fossils from the ground. One commenter stated that fossils must be collected in order to be preserved, *i.e.*, saved from erosion and weathering, and asked the bureaus to either delete all references in the

regulations to “preservation” or to amend the regulations to say that fossils must be collected if they are to be preserved from the destructive forces of nature.

*Bureau response:* Although numerous commenters share this perspective, other people and cultures who use, enjoy, and value federally administered lands do not agree. During the rulemaking process, the bureaus learned that some Native American Tribes value all fossils (vertebrate, invertebrate, and plant) *in situ* and believe that they should be left undisturbed in their resting place. These Tribes asserted that many federally administered lands are ancestral Tribal lands, many of which include important archaeological resources that might be damaged by fossil collection. In addition, these Tribes expressed concern that collection might interfere with natural processes and noted that negative consequences may, and often do, result from such interference.

Additionally, fossils contain the maximum potential to be scientifically informative prior to their excavation. It is in that state that researchers can observe and document their geological context. Therefore, it is often desirable for land managers to preserve known fossil resources in the ground, awaiting specific research needs or new technologies before removing them.

The Act, and therefore the final DOI regulations, strike a middle ground between these perspectives. First, the Act does not state or imply that the term “preservation” means that all fossils must be collected. The Act authorizes, but does not require, collection of paleontological resources. Second, the Act does not predicate collection on threats of weathering; instead it specifies that paleontological resources may be collected only by qualified persons, for the purpose of furthering paleontological knowledge or for public education and in accordance with bureau terms and conditions. The final regulations reflect this Congressional intent, and therefore retain the words “preserve” (see, *e.g.*, § 49.1) and “preservation.”

*5. Comment:* The definition of “associated records” should not include scientific records.

*Bureau response:* The definition in § 49.5 of the regulations is consistent with existing bureau guidance, including the Department Manual (DM) at Part 411 DM, Identifying and Managing Museum Property.

*6. Comment:* Several commenters expressed confusion regarding the proposed rule's definition of “collection.”

*Bureau response:* The bureaus appreciate the comments and simplified this definition in § 49.5 of the final regulations to be consistent with Part 411 DM, Identifying and Managing Museum Property. Part 411 of the DM sets forth the authorized approach to documenting and issuing instructions, policies, and procedures that have general and continuing applicability to Departmental activities, or that are important to the management of the Department.

7. *Comment:* One commenter asked whether “consumptive use” includes sampling such as invasive sampling.

*Bureau response:* The commenter is correct; invasive sampling is the same as consumptive use. The bureaus modified the term in § 49.5 of the final regulations from “consumptive use” to “consumptive analysis.”

8. *Comment:* A few commenters expressed confusion about the proposed rule’s use of the terms “curation” and “curatorial services.” Other commenters asked about the difference between “curation” and “deposit.”

*Bureau response:* To address the comments, the final regulations use the term “curation” only (see § 49.5). To clarify the difference between curation and deposit, the final rule defines the term “deposit.”

9. *Comment:* The definition of “Federal land” is unclear and too broad; it could potentially include lands administered by the Department of Defense.

*Bureau response:* The proposed regulations defined “Federal land” as applying only to the lands that are administered by BLM, Reclamation, FWS, or NPS.

10. *Comment:* Many commenters, particularly scientists and repository managers, stated that “Federal land managers” (referred to as “authorized officers” in the proposed regulations) lack expertise and education sufficient to adequately manage paleontological resources, and therefore the scientists or repository managers should make these decisions on the bureaus’ behalf.

*Bureau response:* It is the responsibility of Federal land managers to manage all resources, impacts, and uses of the lands within the bureaus’ jurisdiction, consistent with Federal laws, regulations, court decisions, policies, available resources, and stakeholder input. Federal land managers may not delegate this responsibility absent specific statutory authorization. Therefore, when managing paleontological resources Federal land managers rely on informed input from many sources, including, but not limited to, paleontologists,

geologists, biologists, museum curators, law enforcement rangers, historians, other agencies and institutions, and the public. The definition of “Federal land manager” at § 49.5 in the final regulations is worded to include this collaboration.

11. *Comment:* The proposed rule’s definition of “fossilized” was unclear.

*Bureau response:* The definition provided in § 49.5 reflects the common understanding of what is fossilized. The bureaus modified the definition to clarify that the preserved content contains evidence or remains of once-living organisms. The term “paleontological resource,” provided by the Act, is a subset of what is fossilized. Thus, for the purposes of the Act and this regulation, all paleontological resources are fossilized, but not all fossils are paleontological resources.

12. *Comment:* Commenters asked whether the terms “fossil” and “paleontological resource” are synonymous.

*Bureau response:* Fossils are presumed to be paleontological resources, subject to the Act and these regulations, except when they are an archaeological resource (subject to 16 U.S.C. 470bb(1)) or are a cultural item (subject to 25 U.S.C. 3001), or when the Federal land manager determines that the fossils do not have paleontological interest under the Act and these regulations. However, even when fossils are not a paleontological resource under the Act and these regulations, they are still regulated and managed under the bureaus’ other legal and regulatory authorities, or under State or Tribal law.

13. *Comment:* Several commenters expressed the view that the bureaus should define the concept of “paleontological interest,” narrowly if possible.

*Bureau response:* Under the Act and these regulations, the concept of paleontological interest is relevant only to the determination of whether or not a fossil is a paleontological resource. If a fossil is determined to lack paleontological interest, it is not considered a “paleontological resource” and is not subject to the Act and these regulations. However, due to the savings provision of the Act and these regulations, even if a fossil is determined not to be a paleontological resource, it is still subject to other laws and regulations. The concept of paleontological interest is not relevant for any other purposes under the Act and these regulations. Therefore, defining paleontological interest did not appear to be necessary or advisable, particularly since any definition may become outdated—for instance, as

scientific knowledge develops or management practice changes.

14. *Comment:* A commenter asked the bureaus to define “plant” and “invertebrate” paleontological resources with more specificity.

*Bureau response:* The bureaus do not believe that more details in the definition of paleontological resources are necessary for the implementation of the regulations, beyond stating in § 49.810(a)(1) that the term “common non-vertebrate” means “common invertebrate or plant.”

15. *Comment:* One Tribe requested that the bureaus modify the definition of a “paleontological resource” to state that all paleontological resources are cultural resources.

*Bureau response:* The Act provides the definition for “paleontological resource.” When a fossil fits the definition of an archaeological resource (provided by 16 U.S.C. 470bb(1)) or the definition of a cultural item (provided by 25 U.S.C. 3001), it will be managed as that resource.

16. *Comment:* One commenter stated that paleontological resources, by definition, are of paleontological interest because they have value to scientists.

*Bureau response:* Under the regulations, a fossil is presumed to have paleontological interest and therefore be subject to the regulations unless and until the Federal land manager determines that the fossil does not have paleontological interest, is an archaeological resource as provided by 16 U.S.C. 470bb(1), or is a cultural item according to 25 U.S.C. 3001 and therefore it is not a “paleontological resource.” In such cases, the fossil would not be subject to the Act and these regulations. A fossil might be determined not to have paleontological interest for reasons that might include, but are not limited to, redundancy or loss of context. For example, a Federal land manager may determine that a particular exposure of abundantly represented and extensively researched shark teeth is so highly redundant that it does not contribute new information and, therefore, lacks paleontological interest. A fossil that is determined not to have paleontological interest is not a paleontological resource under the Act or these regulations and therefore is not regulated under the Act or these regulations, but is managed under other laws and regulations.

17. *Comment:* One commenter expressed confusion about whether fossils that have been determined not to be paleontological resources are subject to the casual collecting part of the regulations.

*Bureau response:* If a fossil is determined by a Federal land manager not to be a paleontological resource, then that fossil is not subject to the Act or these regulations. Collection and use of these non-paleontological resources are governed by other laws and regulations. For example, visitors may collect petrified wood on BLM-administered lands under the free use exemption provided at 43 CFR part 3620. By contrast, visitors may not engage in casual collecting of any fossils, including petrified wood or paleontological resources, in areas administered by NPS or FWS.

*18. Comment:* Some commenters expressed confusion about when the bureaus would manage a fossil as a mineral material and when they would manage it as a paleontological resource.

*Bureau response:* The savings provisions of the Act (16 U.S.C. 470aaa–10) state that laws providing for mineral materials disposal are not modified by the Act. Accordingly, § 49.15(d)(1) of these regulations excludes certain fossilized minerals and geological units on lands administered by BLM and Reclamation from management under this rule. This is consistent with language provided in the USDA Forest Service rule at 36 CFR 291.9(d), as well as with longstanding BLM policy and practice. In response to the comments, § 49.15 of the final regulations clarifies that, on lands administered by BLM and Reclamation, petrified wood is excluded from this regulation because petrified wood on BLM- and Reclamation-administered land is a mineral material according to the Petrified Wood Act of 1962 (Pub. L. 87–713, 30 U.S.C. 611) and is governed by the mineral material disposal laws (30 U.S.C. 601–604). Scientifically important occurrences of petrified wood on lands managed by BLM and Reclamation may be preserved under other applicable authorities. On lands administered by BLM or Reclamation, regulations at 43 CFR part 3620 authorize free use collection of petrified wood.

*19. Comment:* One commenter asked for the definition of paleontological resources to exempt fossil pollen because permits have not been required historically for its collection.

*Bureau response:* The Act and these regulations require permits for the collection of all paleontological resources, with the exception of paleontological resource collection that meets the definition of and parameters for casual collecting on certain lands administered by BLM and Reclamation in subpart I of these regulations. Collection of fossil pollen on lands administered by BLM and Reclamation,

when conducted consistent with the definitions of and parameters of casual collecting in subpart I, does not require a permit.

*20. Comment:* Commenters noted that the bureaus should not consider conodonts and non-vertebrate microfossils paleontological resources.

*Bureau response:* The Act and these regulations require permits for the collection of all paleontological resources, with the exception of paleontological resource collection that meets the definition of and parameters for casual collecting on certain lands administered by BLM and Reclamation in subpart I of these regulations. The proposed rule noted the issues surrounding conodonts, which often lack paleontological interest and therefore, under the Act's definition, should not be considered paleontological resources. In response to the public comments on the proposed rule, conodonts on and from lands administered by BLM and Reclamation are not subject to the final regulation (§ 49.15(d)(3)).

*21. Comment:* Commenters expressed confusion about the impact of the regulations on other laws that apply to paleontological resources or fossils.

*Bureau response:* Section 49.10 clarifies that these regulations do not supplant other laws and regulations that authorize the bureaus to preserve, manage, and protect paleontological resources on and from Federal lands. In other words, those other laws and regulations continue to apply to paleontological resources in addition to these regulations.

*22. Comment:* Commenters expressed concern about the impact of mining, grazing, recreational, and other uses of Federal lands on paleontological resources.

*Bureau response:* Section 49.15 of these regulations explains that these regulations may not be used as the basis for additional requirements for mineral, reclamation, or related multiple-use activities that are authorized or permitted under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws. Those types of permits, such as mining plans of operation, may contain stipulations designed to protect paleontological resources, but the basis for such stipulations would be laws and regulations other than these regulations. Conversely, this regulation may be used as the basis for paleontological resource-protective requirements in non-mineral-related permits. Section 49.15 also clarifies that these regulations apply only to paleontological resources on and from Federal lands as defined in these

regulations. Fossils that are not paleontological resources, or that are located in or are from areas that are not Federal lands as defined in these regulations, are protected under other laws and regulations.

*23. Comment:* The regulations should require paleontological surveys on Federal lands before the bureaus allow activities that would damage paleontological resources, including mining, off-road vehicle use, other recreational access, and mineral collection.

*Bureau response:* Paleontological surveys may be required in order to satisfy other statutes, including the National Environmental Policy Act (NEPA) and others, and bureaus already conduct, and will continue to conduct these surveys under their existing programs.

*24. Comment:* Many commenters, especially field and museum professionals, asked for clarification on how they will be able to identify a paleontological site or location to the public in reports, scientific literature, websites, or by other public dissemination.

*Bureau response:* In the final rule, the bureaus have streamlined and simplified the process for determining when researchers may disclose specific locality information. Section 49.25 of the regulations implements the Act's requirement to maintain confidentiality of specific locality information unless and until the bureau finds that releasing the specific location information would not create a risk of harm to or theft or destruction of the resource or site containing the resource, and would also be consistent with the Act and other laws that apply to the resource.

Researchers can provide generalized locality information in their papers as well as including a statement directing readers to appropriate contacts for more specific information if needed. Researchers can also work with the bureaus to determine which specific locality information can be disclosed without creating a risk of harm to or theft or destruction of the resource or site containing the resource. Permittees may work with the Federal land manager to develop permit-specific allowances for the release of specific locality data collected under that permit. In addition, the bureaus may develop agreements with repositories regarding the sharing of specific location information for the purposes of scientific research or museum management.

The bureaus may develop guidance regarding the publication of paleontological site or location data that

recognizes a profession-wide approach or series of best practices that are also in accordance with the Act. Under the standard process, applicants submit a proposed research purpose and design, the bureaus evaluate the application, including the professional qualifications and expertise of the applicant and the benefits and impacts of the project, and then the bureaus develop the terms and conditions in the permit and the repository agreement that will, among other things, address confidentiality and disclosure of specific location information throughout the life of the permit and the agreement, supporting the goals of the permittee, the bureau, and the repository. This process is used by the U.S. Forest Service and was explained in response to similar comments received by the U.S. Forest Service when it promulgated its regulations in 2015. See 80 FR 21588, 21606 (April 17, 2015). Future guidance issued by the DOI bureaus may clarify or adjust this standard process in coordination with permittees and repositories to support the conservation, understanding, management, and publication of new knowledge about paleontological resources. The BLM intends to issue guidance after the effective date of this rule that would allow for the release of locality data at certain thresholds that would not require case-by-case evaluations of the potential for harm to resources or sites containing resources. All of the bureaus are open to considering flexibilities within the standard process that would allow for the release of specific locality data in a manner that is less burdensome for the bureaus, the permittees, and the repositories, provided that any such actions are consistent with these regulations and the protections in the Act.

**25. Comment:** Many commenters expressed the opinion that the confidentiality requirement is a prohibition, is censorship, and is antithetical to science. Some suggested that the bureaus should evaluate the risks of disclosure based on various organizations' guidelines for information dissemination. Some stated that knowledge and disclosure of specific locality data is necessary for many types of paleontological research and for publishing scientific papers. Commenters also asserted that confidentiality requirements are inconsistent with some museums' collections management policies. Another commenter stated that the process for deliberating and releasing specific location data might take too long. Other commenters expressed

confusion about whether the confidentiality provisions in the proposed regulations apply to paleontological resources that were collected before the effective date of the Act and regulations and/or from non-Federal or split estate lands (lands with Federal mineral interests underlying non-federal surface interests).

**Bureau response:** The confidentiality provisions in the final regulations at § 49.25 and § 49.215 reflect the language of the Act in order to be implemented as appropriate to address the issues presented by the commenters.

The Act and the regulations do not impose a blanket prohibition on the release of information about the nature and specific location of paleontological resources, rather they condition the disclosure of this information on the bureaus' analysis of three criteria. Specifically, § 49.25 states that nature and specific location information is exempt from disclosure unless the Federal land manager makes a three-part finding that disclosure would (1) further the purposes of the Act; (2) not create risk of harm to or theft or destruction of the resource or site containing the resource; and (3) be in accordance with other applicable laws. This is the mandate set forth by Congress in the Act, and the bureaus are not at liberty to ignore Congressional direction. Confidentiality and judicious disclosure of confidential information reduce resource theft and vandalism, support law enforcement ranger safety, and preserve sites and resources, benefitting cultural values (such as areas sacred to some Native Americans), scientific study, and public education.

In response to the concern that the confidentiality provisions would impact scientists' ability to conduct paleontological research, the bureaus note that these provisions are nearly identical to the confidentiality provisions in the Archaeological Resources Protection Act of 1979, the Federal Cave Resources Protection Act of 1988, the Endangered Species Act of 1973, the National Parks Omnibus Management Act of 1998, and other Federal laws.

In response to the assertions that scientific journal editors require paleontologists to disclose specific locality information in their papers, the bureaus reviewed publication guidelines and found, to the contrary, that journals recognize the need for and wisdom of judicious confidentiality.

In response to the comment that confidentiality is contrary to some organizations' and museums' management policies, the bureaus note that the Act requires the repositories

that hold collections made under the Act to maintain the confidentiality of specific location information unless they obtain written permission from the Federal land manager.

**26. Comment:** Many commenters expressed support and suggestions regarding bureau efforts to inventory and monitor paleontological resources on Federal lands, particularly in coordination with avocational paleontologists, scientists, the public, other agencies, and other partners. One commenter suggested that bureaus should supply burro pack trains to support proactive collection of all significant vertebrate fossils. Other commenters asked whether bureau funding is sufficient to carry out the provisions of the regulation regarding inventory, monitoring, and public education and awareness.

**Bureau response:** The final regulation reflects the bureaus' commitment to inventory, monitoring, and public education and awareness, but also notes that such activities will take place as appropriate and practicable (see § 49.30 and § 49.35). Such practicability is related to bureau capacity (such as resources and funding), and other constraining factors. Partnerships with avocational paleontologists, scientists, other agencies, and the general public that are consistent with the Act are an important component of bureau management.

**27. Comment:** Several commenters were concerned about how the bureaus would close areas to the collection of paleontological resources.

**Bureau response:** The Federal land manager will close or restrict the collection of paleontological resources in order to protect resources or provide for public safety. These closures would be area-specific, might be temporary or permanent, and would be tailored to the resource or public safety needs. The area closure provision at § 49.40 is consistent with existing area closure authorities that the bureaus currently exercise, including 43 CFR subpart 8364 (BLM); 43 CFR 423 (Reclamation); 36 CFR 1.5 (NPS); and 50 CFR 25.21 (FWS). The bureaus may institute a temporary closure to address an immediate need, but permanent closures or restrictions would be put in place through the bureau planning processes, which would include opportunity for public comment.

#### **Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals**

**28. Comment:** Several commenters stated that any permitting requirement

is a cumbersome, new, and awkward restriction for scientists.

**Bureau response:** The requirement to obtain a permit prior to collecting fossils from DOI-managed land is not new. Permits have been and continue to be required for all fossil collection on NPS, FWS, and Reclamation land, and vertebrate fossil collection on BLM land. In the Act, Congress reaffirmed the permitting requirement. The regulation's permitting provisions are streamlined, transparent, and as consistent as possible with existing practice.

**29. Comment:** Several commenters stated that the proposed rule was unclear with respect to the applicability of the permitting requirement.

**Bureau response:** In response to the comments, the final regulations at 43 CFR 49.100 (proposed § 49.50) has been retitled to clarify that it applies to permits for paleontological resource activities, not to activities related to other resources or uses of Federal land.

**30. Comment:** One commenter asked the bureaus to form a working group to develop research permits.

**Bureau response:** The regulations address permitting in accordance with the Act. DOI bureaus worked collaboratively and developed a standardized application for paleontological resources use permits. In compliance with the Paperwork Reduction Act, those forms were reviewed and approved by the Office of Management and Budget (OMB). A central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill our statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public. At any point, members of the public may submit comments to the sponsoring Federal agencies and OMB about any currently approved information collections. Such comments may involve, for example, the need for the information and the reporting burdens involved.

**31. Comment:** One commenter stated that permits, reporting, repositories, and enforcement are expensive and provide little-to-no benefit.

**Bureau response:** Permitting, reporting, deposition into repositories, and enforcement are required by the Act. The regulations implement these requirements.

**32. Comment:** Many commenters stated that a permit should not be required for the collecting of common invertebrate and plant fossils. They also stated that depositing all of the collected common invertebrate and plant fossils

into approved repositories would burden those repositories.

**Bureau response:** The bureaus (and Congress) agree with these comments. The Act provides for casual collecting of common invertebrate and plant fossils on certain BLM and Reclamation lands without a permit. Subpart I of this rule implements this provision. Neither the Act nor these regulations require that casual collectors of paleontological resources place these items in an approved repository. However, the Act and the regulations do require deposit of paleontological resources collected under a permit into an approved repository. Because the bureaus share the commenters' concern about burdening repositories, the final regulations require permit applicants to include in their permit applications the name, location, and contact information of a proposed repository that is willing and able to accept the collection that would be made under the permit, if the permit were approved. Absent this information, the permit application is incomplete and will not be approved.

**33. Comment:** Commenters stated that a permit should not be required to collect vertebrate fossils that are more numerous, such as shark teeth, or to collect fossils for educational purposes.

**Bureau response:** The bureaus recognize that some vertebrate fossils are common, but the Act does not provide for the casual collection of common vertebrate fossils. Since the casual collection provision of the Act is for common invertebrate and plant paleontological resources only, the collecting of all other paleontological resources must be conducted under a permit (see § 49.100).

**34. Comment:** Several commenters requested clarification on when bureaus would require a permit for paleontology-related activities other than collection of paleontological resources, including whether Federal Government personnel would be required to obtain a permit before collecting paleontological resources.

**Bureau response:** In response to the comments, the bureaus clarified the language in the final regulations at 43 CFR 49.100(b) to state that permits issued under the authority of the Act and the regulation may be required for paleontological research or consulting activities that do not involve collection. Bureau policy and guidance will define this process as warranted. The final regulations retain the requirement for Federal Government personnel, as well as agents and contractors, to obtain a permit or other type of bureau authorization prior to collecting paleontological resources because the

Act does not exempt such personnel from the permit requirement of the Act. Permits, whether issued to agency staff, professional or amateur scientists, or project consultants, serve the important functions of tracking paleontological resources (in both the field and in collections) in order to further paleontological knowledge and public education.

**35. Comment:** Commenters stated that repeatedly applying for a permit for the same project would be burdensome and suggested that the regulations should provide for annual permit renewal.

**Bureau response:** The bureaus agree. Permit applicants are required to provide dates of the proposed work in their permit applications so that Federal land managers may issue a permit with the appropriate duration. The final regulations at § 49.130(a) also provide for permit modification, which would include permit renewals when an approved project takes longer than originally anticipated.

**36. Comment:** Many commenters expressed frustration that the permitting requirements and process in the proposed regulations were too restrictive, cumbersome, potentially slow, and exclusionary.

**Bureau response:** The permit requirements in these regulations closely track the conditions provided in the Act. These requirements ensure that collection, research, and consulting activities are conducted in a manner consistent with the purposes of the Act as well as other laws and directives that apply to Federal lands and resources.

**37. Comment:** Many commenters suggested less stringent applicant qualification requirements. They stated that persons without advanced degrees or formal paleontological education, such as amateur and avocational paleontologists and graduate students, should be able to receive permits. Other commenters stated that applicant qualifications under the DOI regulations should be consistent with application qualifications under the Forest Service regulations.

**Bureau response:** In response to the comments, the bureaus phrased the final regulations at 43 CFR 49.110 to enable permit applicants to demonstrate education, training, and experience appropriate to the proposed project rather than requiring a graduate degree. The bureaus recognize that many amateur and avocational paleontologists possess a profound knowledge of these resources. In addition, graduate students and other types of scientists such as biologists and geologists may be sufficiently knowledgeable to collect paleontological resources under certain



circumstances. Broadening the range of qualifications for applicants will enhance partnerships with the bureaus and offer greater opportunities for scientific knowledge and public enjoyment. The qualification requirements are very similar to those in the Forest Service regulations. Under both sets of regulations, the bureaus will evaluate a person's qualifications in relation to the complexity and context of the proposed project.

Additionally, a provision in the final regulation (§ 49.105(b)) allows individuals who do not meet the qualification requirements described in § 49.110 to perform work under an issued permit when appropriately supervised by a permittee.

**38. Comment:** Several commenters stated that the proposed regulations required unrealistically specific permit applications, and that permittees do not always know what they will find before they find it.

**Bureau response:** The regulations provide that bureaus can modify permits in response to changed circumstances, including unanticipated discoveries.

**39. Comment:** One commenter stated that the requirement for a permit applicant to demonstrate experience in "planning" was too vague.

**Bureau response:** The bureaus agree and removed that requirement from the list of permit application requirements.

**40. Comment:** One commenter asked how the bureaus would consider an applicant's "past performance" in a permit application.

**Bureau response:** In response to the comment, the bureaus added language to § 49.110(b) to explain that "past performance" includes compliance with previous permits, relevant civil or criminal violations, or relevant current indictments or charges.

**41. Comment:** One commenter asked whether the bureaus would charge fees for permits.

**Bureau response:** The Act does not provide authorization for the bureaus to charge fees (or cost recovery) for permits, but individual bureaus may charge fees under separate authorities. Because the bureaus view permittees as partners who provide scientific information and inventory of paleontological resources to the bureaus in furtherance of the Act, it is reasonable not to charge fees for permits.

**42. Comment:** Several commenters asked for more standardization of the permit applications and form instructions among the bureaus, and expressed concern about the use of the NPS's Research Permit and Reporting

System (RPRS) for collection and disturbance on NPS-administered lands. Other commenters recommended deleting or easing some of the permit application requirements.

**Bureau response:** In response to the comments, the final regulations contain simplified and reduced permit application requirements. The four DOI bureaus have standardized the process as much as possible. Applicants can now submit very similar or identical information to each bureau. Applicants use a standardized paleontology permit application to apply for a permit to collect resources on lands administered by BLM, Reclamation, or FWS. When proposing to conduct these activities on lands administered by NPS, permit applicants use RPRS, currently accessible at <https://irma.nps.gov/rprs/>. Even though the bureaus have different permitting systems, the information required of permit applicants is consistent. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form, and respond to that bureau's requests for information in a timely manner.

**43. Comment:** One commenter asked whether a bureau has the discretion to ask permit applicants for more information than that listed in the regulations. Another commenter noted that detailed information in the application, even if not used to issue the permit initially, might be helpful at a later point.

**Bureau response:** The bureaus agree that detailed information is helpful. Per § 49.115, as a follow-up to the application initially submitted, applicants may be asked for clarification when necessary for Federal land managers to determine that the applicant is qualified to conduct the proposed work, that the application is complete, and that the proposed activity meets the requirements of the Act and the final regulations.

**44. Comment:** Several commenters suggested that permit applicants should be able to include in their permit applications a request for permission to disclose specific locality information. Another commenter asked for clarification of the term "specific locality."

**Bureau response:** Subpart A of the final regulation defines the term "specific locality." Applicants may request permission to disclose specific locality information in their permit application, as part of their project description.

**45. Comment:** Several commenters asked about the compliance requirements for permits and suggested

that paleontological collection permits should be subject to the same terms and conditions as permits for other Federal land uses.

**Bureau response:** The regulations at 43 CFR 49.120 explain how the bureaus will make a decision about permit applications. A decision about a permit application is a Federal agency decision and as such is subject to compliance requirements in accordance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, Executive Order 13175, and other authorities. Like any use of Federal lands, the bureaus would impose compliance requirements, including, but not limited to, any provisions for reducing environmental impacts associated with a paleontological permit application and proposed project, based on the scope of the proposed activities and the reasonably foreseeable impacts of those activities. The final regulation includes terms and conditions for approved paleontological permits that are applicable to those resources and that implement the Act.

**46. Comment:** Commenters proposed "same-day" permits for surface collection of common fossils and 30-day permits for projects involving excavation, and an estimated timetable for processing permit applications.

**Bureau response:** The permitting provisions in the regulation are consistent with the purposes of the Act and do not impose new requirements that would cause permitting to take more time than current permitting requirements. Adding deadlines to these provisions may hinder the bureaus' ability to comply with applicable laws, regulations, executive orders, and other requirements, and therefore are not included in the regulation.

**47. Comment:** Several commenters asked for more detail in the permit approval process, specifically for adding in multiple permit levels, categories of site protection, fossils available for collection, curation requirements, publication requirements, and other management issues.

**Bureau response:** Permits are situation-specific. The bureaus, therefore, have streamlined the regulatory framework appropriate to management of this resource across a variety of possible circumstances. Adding additional categories to the final regulations would add complexity and delays to the permit application, evaluation, and decision-making process. Permit applicants are encouraged to submit as much information as possible to help the Federal land manager understand the



proposed project, evaluate potential impacts, and make a decision about the application.

**48. Comment:** Commenters asked the bureaus to consider other existing or recent paleontological permits, as well as other competing uses of Federal land, when evaluating a new application to avoid conflicts among permittees.

**Bureau response:** Federal land managers consider all of the uses of the land, including competing uses and resource management concerns, when evaluating proposed use of Federal lands. However, the Act does not provide exclusivity or allow “claims” for paleontological resource use collection.

**49. Comment:** The bureaus received many comments about the role of repositories in the permit application and approval process. Several commenters urged consultation and an agreement between the permittee and repository prior to permit approval. Another commenter urged the bureaus to have a list of pre-approved repositories from which the applicant can pick, and to handle the repository approval process prior to and separately from the permit approval process. Other commenters suggested that repositories should be able to agree “in principle” to accept the collection, and then be able to accept only part of a collection and refuse the remaining part, or even refuse the entire collection.

**Bureau response:** In response to the comments, the bureaus worded the final regulation as concisely as possible in order to avoid imposing a one-size-fits-all approach, and instead to maximize flexibility for repositories, permittees, and the bureaus. The final regulations do not include repository approval in the permitting decision process, but instead simply require, as a condition for permit approval, that an approved repository will accept the collection in accordance with the terms and conditions included in the permit. This flexibility will allow bureau staff, repositories, and permittees to develop project-specific and collection-specific approaches while still adhering to the Act’s instruction to deposit the paleontological resources collected under a permit into an approved repository.

**50. Comment:** Several commenters noted that the proposed collection needs to be acceptable to repositories. Commenters stated that it is the permittees’ responsibility to collect only those fossils that he/she is sure will be accepted by a repository, and that the written verification from the proposed repository should include the right to accept or refuse all or portions of the

collection based on compliance with the repository’s mission, policy, and scientific and collections standards. At the same time, another commenter stated that written verification is not necessary for employees of that repository.

**Bureau response:** Deciding which paleontological resources to select for long-term preservation in the approved repository must be the result of collaboration between the permittee, the repository official, and the Federal land manager. This is why the agreement between the applicant and the repository official must make clear what the repository will, and will not, accept. The Federal land manager will then limit the permit authorization to what the permittee and repository official have agreed to collect and subsequently accept at the repository.

However, the bureaus recognize that collecting activities often result in collections or portions of collections that do not warrant long-term preservation and that such preservation would impose unnecessary burdens on both the repository and the bureau. This is why provisions at § 49.200(c) allow the Federal land manager, with input from the permittee and repository official, to determine that some collections, or portions of collections, do not meet the Act’s requirement of furthering paleontological knowledge, public education, or the management of paleontological resources, and therefore may be assigned to working collections.

**51. Comment:** Permit applicants should not be involved in the approval of a repository.

**Bureau response:** Section 49.205 clarifies that it is the role of the bureaus to review and approve repositories. The bureaus recognize that a permittee should not act as the repository official on the same permit and have clarified this in the final regulation at § 49.125(a)(10).

**52. Comment:** Permittees should be required to furnish copies of their publications to the bureaus that permitted the project.

**Bureau response:** The bureaus have always required submission of copies of publications and reports that are generated on the basis of permitted activity. The final regulations include clarifying language to ensure that this practice continues.

**53. Comment:** Commenters asked about the expiration date and filing deadlines for annual reports.

**Bureau response:** The final regulation states that reports must be filed in accordance with the dates and formats specified in the permit.

**54. Comment:** One commenter stated that the regulations should limit bureaus’ discretion.

**Bureau response:** The final regulations provide an appropriate balance of enumerated criteria and discretion. Federal land managers are responsible for addressing a wide range of resources, uses, and stakeholders, in addition to paleontological resources and paleontologists.

**55. Comment:** Many commenters expressed concern about the requirement to obtain written permission from the Federal land manager before releasing, disclosing, or sharing information about the specific location of paleontological resources.

**Bureau response:** Section 6304(c)(3) of the Act expressly instructs that permittees and repositories may not release specific locality data without written permission from the Secretary. The Act tasks the Secretary (acting through the bureaus) with implementing a balance between disclosure in order to enhance scientific access and confidentiality in order to protect resources from theft and vandalism. The bureaus recognize the importance of sharing data in order to enhance scientific discourse and continue to allow appropriate sharing of this data. However, the regulations do not elaborate beyond the Act’s stated provisions so that each bureau may develop its own guidance on the confidentiality of paleontological locality and location data according to its unique mission and authorities. When appropriate, the permit will define the terms of release, disclosure, or sharing of specific location information. The Federal land manager may revise the permission when warranted, either through a permit modification or in specific instructions, for example in comments to draft reports that disclose location information.

**56. Comment:** One commenter asked whether the bond that may be required under 43 CFR 49.125(c) may include reimbursement of bureau costs. Another commenter asked for more specificity about the bonding requirement.

**Bureau response:** The purpose of a bond is to cover bureau costs in the event of permittee non-performance. A bond may be required depending on the scale of a permitted activity. Individual bureau guidance will provide clarification regarding bonding.

**57. Comment:** Several commenters stated that paleontological resources collected under a permit should become the property of the repository that houses the collection.

*Bureau response:* The Act expressly states that paleontological resources collected under a permit remain the property of the United States. The final regulation therefore retains this same statement.

58. *Comment:* Several commenters addressed the costs of fieldwork, preparation, and curation. Some argued that permittees should not be responsible for all of the costs associated with the collections that they make. Others stated that the bureaus, the repositories, and or project proponents should assume these costs. Commenters suggested that a budget for costs assumed by permittee, repository(ies), a project proponent, or bureaus should be resolved prior to permit approval.

*Bureau response:* In response to these comments, the final regulations require permit applicants to develop cost projections for the proposed work and state that permittees are responsible for the costs of the project if approved, unless these costs are allocated differently in a separate written agreement (such as a contract between a paleontological consulting company and a project proponent). Also in response to the comments, the final regulations do not hold permittees responsible for long-term curation costs, again unless this is addressed in a separate written document. Thus, the final regulations allow for other parties to be responsible for long-term curation costs.

59. *Comment:* One commenter suggested that permittees should acknowledge the repository as well as the permitting bureau in any report, publication, or other media resulting from the work performed under the permit.

*Bureau response:* The bureaus agree with the comment; the final regulation incorporates this requirement into the terms and conditions for an approved permit.

60. *Comment:* Several commenters were concerned about the concept of “working collections.” These commenters asked about the legal implications under the Act and Federal property law, the use of working collections, and the implications for deaccessioning (removing Federal property from a museum).

*Bureau response:* The final regulation reaffirms that all paleontological resources collected from Federal land under a permit remain U.S. property and must be deposited into an approved repository. However, the bureaus recognize that not all collected fossils are worthy of long-term preservation. Provisions at § 49.200(c) allow the

Federal land manager, with input from the repository official and permittee, to determine that a collection, or portion of a collection, does not further paleontological knowledge, public education, or management of paleontological resources and therefore may be assigned to a working collection. The definition of a working collection, provided at § 49.5, is consistent with guidance in the Departmental Manual in part 411 and all working collections should be managed in a manner consistent with departmental and, as appropriate, bureau policy.

61. *Comment:* A commenter asked for clarification that a permit’s terms and conditions apply only to the project and activities authorized under that permit.

*Bureau response:* The bureaus made this clarification at § 49.125(b). Before the bureau approves a permit, permit applicants should review and agree to these terms and conditions.

62. *Comment:* Several commenters asked that permittees, not repositories, should be responsible for providing bureaus with DI Form 9007, “Repository Receipt for Collections (Paleontology).”

*Bureau response:* The bureaus made this clarification at § 49.125(a)(10).

63. *Comment:* One commenter suggested that the bureaus should address a potential violation of a permit term or condition by modification of the permit, while they should address an actual violation of a permit term or condition by suspension of the permit.

*Bureau response:* The bureaus agree with the comment; the final regulation at § 49.130(a) clarifies that bureaus may modify permits if there is a potential or actual violation of a permit term or condition.

64. *Comment:* One commenter asked how permits can accommodate new field discoveries. Another commenter asked about the consequences of a permittee failing to meet a deadline in the permit, such as depositing a collection into an approved repository.

*Bureau response:* The bureaus may modify permits. For example, if a permittee makes a discovery or cannot meet a particular deadline, he or she may request a modification to the permit in order to accommodate that discovery or to change the deadline to a different date. Other consequences for the violation of permit terms and conditions are permit suspension, revocation, or the assessment of penalties.

65. *Comment:* Several commenters asked why the proposed regulations provided for verbal or written notification of permit modification, suspension, revocation, or cancellation, but then provided that the permit

modification, suspension, revocation, or cancellation was effective only when the permittee receives the written notification.

*Bureau response:* The purpose of the verbal notification is to provide early notice to the permittee and prompt correction of the issues that led to the permit modification, suspension, revocation, or cancellation. However, the permit modification, suspension, revocation, or cancellation becomes effective upon the permittee’s receipt of the written notification.

66. *Comment:* One commenter asked for more detailed methodology in § 40.130 to justify bureau decisions about permit modification, suspension, revocation, or cancellation and avoid challenges from aggrieved permittees.

*Bureau response:* This section explains the reasons for permit modification, suspension, revocation, or cancellation but also maintains flexibility to respond quickly to the conditions or events that necessitate the modification, suspension, revocation, or cancellation. These events may be emergencies, such as fires, landslides, health issues, or accidents, or non-emergencies, such as some permit violations, but in all cases bureau personnel need to be able to address the situation as needed and efficiently. Under § 49.140, permit-related decisions may be appealed.

67. *Comment:* One commenter noted that the proposed rule was inconsistent about the consequences for violation of a term or condition of a permit. While § 49.125(e) stated that violations of permit terms may subject the person to penalties, § 49.130(a)–(c) stated that violations of permit terms and conditions may result in permit modification, suspension, or revocation.

*Bureau response:* The bureaus agree and worded § 49.125(e) to clarify that a violation of permit terms and conditions may result in permit modification, suspension, revocation, and/or penalties. This language provides flexibility and avoids the possible pitfalls of a one-size-fits-all consequence.

### Subpart C—Management of Paleontological Resource Collections

68. *Comment:* One commenter recommended that approved repositories should assign globally unique identifiers (GUIDs) to collected specimens according to data management best practices and submit the GUID assignment information to DOI. The repository-assigned GUIDs would be incorporated into the DOI museum collections data management systems, and repository-assigned GUIDs

would be required when conducting collection inventories and inquiries.

*Bureau response:* The bureaus appreciate the comment. However, the comment proposes a procedure that is not within the scope of the Act and these regulations but instead is within the scope of Departmental museum collections policy.

69. *Comment:* Comments asked about the rules applicable to working collections, specifically ownership, disposition, and standards.

*Bureau response:* In response to these comments, the bureaus clarified the definition of working collections at § 49.5.

70. *Comment:* Several commenters expressed confusion about the January 6, 2017, date and recommended changing the text to read, “The curation of paleontological resources collected from Federal land before the implementation of the final rules is governed by the terms and conditions of the original collection permit or agreement.”

*Bureau response:* The bureaus agree with this comment and clarified the regulation at § 49.200(b) to incorporate the recommendation. In addition, § 49.200(a) clearly states that a collection made pursuant to a permit issued under the final regulations must be deposited in an approved repository. This section does not state that it applies to preexisting collections.

71. *Comment:* Commenters submitted a wide variety of comments regarding the process, timing, and criteria for selecting a repository for the paleontological resources that are collected under the Act and these regulations. One commenter questioned the need for approved repositories at all. Commenters expressed concern that the repository approval process would be burdensome. Another commenter suggested that permit approval should be separate from repository approval, and asked the bureaus to maintain a list of already-approved repositories and either allow the permit applicant to choose from that list, or inform the applicant that he/she will need to wait for the permit pending approval/denial of repository, which would be a wholly separate action. Other commenters were concerned that repositories may initially agree to accept a collection, but then change their minds based on space considerations, resources, or other factors. Commenters also stated that permit applicants and permittees do not control these types of decisions. These commenters suggested that repositories should be allowed to accept custody, decline custody, or provisionally accept

custody of the collection before the collecting permit is issued.

*Bureau response:* The Act specifically requires the deposit of all paleontological resources collected under a permit in an approved repository, and so the final regulations contain this requirement. Each permit applicant identifies a repository that is willing to accept the proposed collection. During the review of the permit application, the Federal land manager determines whether the identified repository meets the standards set forth in § 49.205. The bureaus do not have a single list of pre-approved repositories to serve as a “menu” for permitting; rather the Federal land manager approves the deposit of the proposed collection under that permit into either the identified repository or another repository that meets those standards. The bureaus can approve repositories at any time.

72. *Comment:* Commenters noted that the process described in the proposed regulations for depositing paleontological resources would actually work against timely placement of the resources into the repository.

*Bureau response:* The bureaus agree and streamlined the language at § 49.210 to clarify that agreements between repositories and the bureaus can be reviewed, modified, or developed on a parallel track with the deposit, and not necessarily prior to the deposit.

73. *Comment:* Commenters alleged that the process in the proposed regulations for approving a repository afforded too much discretion to the Federal land managers.

*Bureau response:* In consideration of this comment, the bureaus revised the repository approval language at § 49.120 and § 49.205 to clarify that the Federal land manager will work with the permit applicant, the proposed repository, and if necessary other repositories to determine which repository to approve for the proposed collection.

74. *Comment:* Commenters stated that repositories for collected resources should be situated near the area from which the resources were extracted.

*Bureau response:* The bureaus agree that geographic proximity to the collecting site is an important consideration, as well as other factors such as repository capability and capacity. The Federal land manager would consider all of these factors when evaluating which repository should be approved to receive a collection.

75. *Comment:* Several commenters pointed out that there may be situations when, despite the best efforts of the permittee and the Federal land manager to ensure that all paleontological

resources collected from federally administered lands meet the Act’s criteria for collection (furtherance of paleontological knowledge, public education, or management of paleontological resources), there may be times when some of the collected resources do not meet these criteria.

*Bureau response:* The final regulations accommodate this situation at § 49.200 by allowing these paleontological resources to be placed in working collections, which are available for research, education, or consumption, but are not cataloged into a permanent collection.

76. *Comment:* Commenters stated that permittees, not repositories, should be responsible for filing DI Form 9007 (Repository Receipt for Collections (Paleontology)) with the Federal land manager, since only permittees can verify that all of the specimens under a permit were actually deposited. Another commenter suggested that the repositories should be required to maintain a copy of DI Form 9007 (Repository Receipt for Collections (Paleontology)) in its permanent files.

*Bureau response:* The bureaus concur with both comments. The permittee, not the repository, is responsible for submitting DI Form 9007 to the bureau. It is standard practice for repositories to maintain a copy of DI Form 9007 as part of receiving the collection.

77. *Comment:* Commenters noted that the repositories that house Federal paleontological collections bear a large financial burden for storage, curation, and reporting requirements that, under current regulations and practices, are not adequately covered by grants or permittees. They also asserted that the proposed regulations contained new management and reporting requirements that would increase this financial burden. For example, several commenters stated that the proposed regulations would require repositories to “track” every use or request for use of a specimen. Another commenter stated that the bureaus’ requirements and oversight would be duplicative with museums’ current management standards. They suggested several different options for reducing this burden such as eliminating some paperwork requirements, asking the Federal Government or the parties who initiate the collection to assume more of the cost, and having the authority to charge fees.

*Bureau response:* The regulations have been worded to ensure that paleontological resources are collected under permit only when that collection would meet the Act’s criteria for permitted collection (furtherance of

paleontological knowledge, public education, or management of paleontological resources), and to ensure that the permit applicant understands at the outset that he or she will be responsible for the short-term costs of preparing the collection for curation. However, the regulations do not assign responsibility for long-term curation costs to the permittees. The bureaus also worded the regulation to clarify that the standards for curation of any paleontological resources collected under permit pursuant to these regulations are the same as the standards that already apply to existing collections, and therefore repositories should readily meet these standards without experiencing additional burdens. Finally, § 49.215 is worded to broaden and clarify repositories' ability to recover their costs by charging reasonable fees, consistent with applicable law, for the costs they incur when curating collections made under the Act.

*78. Comment:* One commenter asked who assumes responsibility for curation costs after the original permittee retires.

*Bureau response:* The language of the final regulations allows permittees, repositories, and bureaus to determine appropriate fee structures depending on the nature of the activity and the reason for its collection (see § 49.215).

*79. Comment:* One commenter asserted that repositories already meeting high standards of fossil curation should be exempt from bureau oversight. However, other commenters suggested the opposite, noting that Federal fossils housed in approved repositories are in effect long-term loans, and that the permittee and approved repository should be required to receive bureau approval for anything done to the fossils (*e.g.*, molding and casting, chemical analyses, consumptive sampling, CT and laser scanning) that was not authorized in the original permit. Another suggestion was that the bureaus should provide repositories with blanket approval for a set period, then decide whether to renew that approval based on performance and reports in order to help agencies keep repositories accountable while reducing paperwork. Other commenters stated that individualized agreements for each collection would be too burdensome for the repositories, and that repository agreements would be more effective and less burdensome if they covered multiple collections.

*Bureau response:* To address these comments, the regulation at § 49.210(a) states that an agreement between a bureau and repository can, and should, cover multiple Federal collections. The

agreement may last for a few years and serve as "blanket approval" for various actions.

*80. Comment:* One commenter stated that repository agreements are between permittees and approved repositories.

*Bureau response:* Section 49.210 describes the content of agreements between the bureaus and the approved repositories. Permittees often have their own curation agreements with repositories in which the repository commits to accepting the collection, often in return for payment.

*81. Comment:* Several commenters recommended that DOI transfer all stewardship responsibilities, authority, and custody of collections to approved repositories, particularly since repositories expend funds on curation.

*Bureau response:* The Act specifically states that paleontological resources collected from Federal lands will remain the property of the United States. The bureaus develop agreements with repositories in order to meet shared goals.

*82. Comment:* One commenter recommended that DOI should adopt best practices for digitally managing and mobilizing collections records through the workflows and standards already in place in repositories' data management systems.

*Bureau response:* The bureaus agree. The Act requires collaborative efforts with non-Federal partners and the scientific community where possible. The Department is currently developing policy for digitally managing museum records. Much of this effort is already underway in collaboration with repository partners in order to develop shared best practices.

*83. Comment:* One commenter urged the bureaus to standardize frequency, methods, and reporting process for inventories.

*Bureau response:* Standardized inventory procedures are contained in departmental guidance at 411 DM, and bureaus follow it as feasible within available resources.

*84. Comment:* One comment stated that publications and reports are not the repository's responsibility.

*Bureau response:* The bureaus agree in part and disagree in part. Where researchers study a specimen at that repository, they, rather than the repository, are responsible for making their publications or reports available to the bureau (see § 49.210(b)(10)). Repositories, however, are responsible for submitting information concerning inventory to the bureaus (see § 49.215(a)(3)).

*85. Comment:* Several commenters suggested that the regulations should

provide repository staff with upfront approval to conduct research-related activities including reproduction and consumptive analysis. Other commenters suggested that the regulations should direct the bureaus to transfer decision-making autonomy for these activities to repository staff in permits and/or bureau-repository agreements. Several commenters suggested that the regulations should contain detailed definitions of the term "reproduction" and "consumptive use" by adding explanations of traditional versus digital reproduction, as well as types of alterations such as glues, putties, molding, and casting. Another suggested that the regulations could provide upfront blanket approval for non-invasive, non-consumptive types of reproduction but require case-by-case approval for other types of research activities.

*Bureau response:* Neither the Act nor other statutes authorize the bureaus to delegate a broad one-size-fits-all grant of decision-making authority regarding the topics of reproduction and consumptive analysis to repository staff. The bureaus also do not agree that defining the scope of repository decision-making is an appropriate topic for collection permits, since a permit is a contract between the bureau and the permittee to which the repository is not a signatory. Instead, as authorized by Congress in section 6305 of the Act, repository decision-making and roles are more appropriately addressed in agreements between the repositories and bureaus.

If a repository agreement addresses the topic of reproduction or consumptive use, then case-by-case approval may not be necessary. Such agreements are a key component of responsible, transparent, and publicly accountable management. In response to comments, the bureaus added the term "duties and responsibilities" to § 49.210 to indicate that agreements may include, as requested by these commenters, upfront approval for various levels of reproduction and consumptive analysis.

*86. Comment:* Several commenters stated that, if collections are moved from one repository to another at bureau request, the burden of arranging and paying for the transfer should fall on the bureau, not on the repositories.

*Bureau response:* The bureaus believe that this topic should be addressed in bureau-repository agreements and that the regulatory provisions at § 49.210 are sufficiently flexible for such agreements to address these sorts of details.

*87. Comment:* One commenter suggested that the regulations should specifically state whether temporary loans of material from one institution to

another for research or exhibit purposes require approval from the Federal land manager. Another commenter suggested that loans should be addressed in a separate paragraph.

**Bureau response:** The bureaus concur with this point and added paragraph (b)(7) to the final regulations at § 49.210. This provision will motivate both parties to develop appropriate agreements early in the collection's history; such agreements are a key component of responsible, transparent, and publicly accountable management.

**88. Comment:** Section 49.215(a)(11) of the proposed regulations stated that agreements between the bureau and approved repository may include, as appropriate, a statement that "employees of the repository will take no actions whereby any of the collection(s) shall or may be encumbered, seized, taken, sold, attached, lost, stolen, destroyed or damaged." Reviewers pointed out that collections can be destroyed or damaged by various curation actions such as preparation, molding and casting, photography, moving, and consumptive use. One reviewer suggested more positive wording.

**Bureau response:** The bureaus agree with all of these comments. Agreements between the bureau and approved repository may contain a statement that employees of the repository will work to preserve and protect specimens in their care using best professional practices. References to "destroyed or damaged" in the discretionary statement were removed.

**89. Comment:** Several commenters stated that the curatorial standards should not apply to teaching collections.

**Bureau response:** The final regulations include a definition of "working collections" in § 49.5 that includes fossils that are placed in a teaching collection or other public education facility. In addition, § 49.215 clarifies that the Department and bureau curation standards apply to the collections that are deposited and accessioned into approved repositories, but do not require the application of these standards to "working collections."

**90. Comment:** Several commenters requested clarification on some of the requirements for repositories, for example the scope of collections.

**Bureau response:** The bureaus rewrote § 49.205(a)(2) to clarify that repositories have flexibility when demonstrating their ability to receive and store paleontological resources from Federal lands.

**91. Comment:** A few commenters asked whether permittees or repositories are responsible for submitting reports, and expressed concern about the lack of enforcement for this requirement.

**Bureau response:** Permittees are responsible for submitting reports to the bureaus describing the status of the fieldwork, collection, and research (see § 49.125). Repositories are responsible for reporting inventory results to the bureaus (see § 49.215). These reporting requirements are not new; permittees and repositories submit reports to bureaus already. The final regulations improve enforceability by listing reporting requirements as a condition of permit approval and as a topic in repository agreements. The purpose of these reports is to ensure that permittees, repositories, and the bureaus maintain accountability to the American public for the care and management of Federal paleontological resources. The final regulations simplify the reporting process for resources from lands administered by BLM, Reclamation, or FWS by incorporating the new DI Form 9006 (Paleontological Permit Report Cover Sheet). For activities conducted on lands administered by NPS, reports must be submitted under the existing NPS RPRS system.

**92. Comment:** A commenter alleged that submission of reports to the bureaus does not provide a value to science.

**Bureau response:** Reports provide information to the bureaus that is necessary in order to manage Federal paleontological resources using scientific principles and expertise and to maintain compliance with other Federal laws. Federal paleontological resource management is based on many considerations in addition to science. The bureaus believe that it is reasonable to require the persons and institutions who collect, study, and curate paleontological resources from federally administered lands to provide the bureaus and the American public with sufficient information to support and guide the bureaus' ongoing management, conservation, and public education regarding these resources.

**93. Comment:** Commenters stated that approved repository staff should be authorized to disclose specific location information based on current professional standards, best practices, and museum policy.

**Bureau response:** In the Act, Congress did not base disclosure on current professional practices, best practices, and museum policies; instead it based disclosure on a determination by the Federal land manager that disclosure would (1) further the purposes of the

Act; (2) not create risk of harm to or theft or destruction of the resource or site containing the resource; and (3) be in accordance with other applicable laws. During the development of an agreement with a repository, the Federal land manager may include an authorization for the repository to disclose specific location information for a collection, if the Federal land manager has made the three-part finding for such disclosure (see § 49.210(b)(5), which states that repository agreements may address and guide the museums, researchers, and the bureaus in how confidentiality matters will be addressed). As professional paleontological organizations develop guidelines for establishing confidentiality in order to protect paleontological resources from theft or vandalism, bureaus may adopt some of these best practices as policy.

**94. Comment:** Several commenters asked about the ownership of collected specimens.

**Bureau response:** Collected specimens are Federal property. When the specimens are accessioned into museum collections, the ownership does not transfer to the repository; instead, the repository is holding the material in trust for the U.S. Government. When specimens are moved to working collections, they remain Federal property. Specimens collected under the casual collecting provisions of the Act and these regulations likewise remain Federal property but are largely not managed by the U.S. Government, except for the actions prohibited under the Act and subpart D of the regulations.

**95. Comment:** Many commenters were concerned that the authorized Federal official would not be qualified to determine which paleontological resources should be removed from a museum collection. One commenter proposed the following language, "However, paleontological resources that have been accessioned into a long-term repository with permanent catalog numbers should not be removed without following that repository's deaccessioning policy, which will normally be to transfer the material to another permanent repository."

**Bureau response:** The Federal land manager, not repositories, must make decisions about which fossils will be permanently preserved in museum collections. The Federal land manager will work in coordination with the repository official and other appropriate subject matter experts to remove resources from museum collections and place them into working collections when those resources are determined to be redundant, lack adequate associated

data, or otherwise do not further paleontological knowledge, public education, or management of paleontological resources.

96. *Comment:* How will collections be transferred from one repository to another?

*Bureau response:* In situations involving movement of the collection to another approved repository, the first repository would ship the collection to the second repository in accordance with the Federal land manager's instructions. The bureau would then modify the deposit agreement with the first repository and enter into a new agreement with the second repository.

#### Subpart D—Prohibited Acts

97. *Comment:* Several commenters asserted that the phrase “should have known” in § 49.300(a)(2) and (a)(3) is unclear and should be deleted or defined.

*Bureau response:* The “should have known” language cannot be deleted because the “knew or should have known” standard is contained in the PRPA. The bureaus believe that explaining the standard in this preamble with an example is more useful and appropriate than attempting to define the standard in the regulation.

Whether a person “knew or should have known” is an objective standard based on what a reasonable person would know or should know, in the exercise of due care and reasonable diligence and in consideration of the particular circumstances and context, about the facts that would make the person's acts prohibited under 43 CFR 49.300(a)(2) or (a)(3). For example, whether a person knew or should have known a paleontological resource to have been excavated or removed from Federal land under § 49.300(a)(2) or (a)(3) may depend on what the person would have known after conducting reasonably diligent inquiries and taking other reasonable measures to learn about the provenience of the resource before taking the actions described in paragraphs (a)(2) and (a)(3).

98. *Comment:* A commenter asked who determines whether a person “knew or should have known” that his or her actions are prohibited by subpart D.

*Bureau response:* To the extent, if any, that the commenter is suggesting that the person's knowledge of the law—the person's knowledge that his or her conduct violated the law—is the key consideration, this is not accurate. The key consideration under the “knew or should have known” standard, which is found in paragraphs (a)(2) and (a)(3) but not paragraphs (a)(1) and (a)(4), is

knowledge of the facts that would make the person's acts prohibited.

Whether the person committed a prohibited action is determined through the process of bureau investigation and in some cases presentation to a court or the Office of Hearings and Appeals, Department of the Interior. The Federal land manager works with law enforcement personnel, resource specialists, and other subject matter experts in this process.

99. *Comment:* One commenter asked the bureaus to delete the language that prohibits the sale or purchase of fossils from Federal lands, because it restates the previous regulatory language.

*Bureau response:* Each of the paragraphs in § 49.300 describe different actions and are based directly on the Act and, therefore, need to remain in the final regulation.

100. *Comment:* One commenter asked about the consequences for a person who buys or receives a paleontological resource that, unbeknown to that person, is from Federal land.

*Bureau response:* Under the language of § 49.300(a)(2) and (a)(3), if the person should have known that the resource is from Federal land, or in other words a reasonable person would have known this fact after making a reasonable effort to learn the provenience (the *in situ* location) of the resource before buying or receiving it, then the person who bought or received the resource has committed a prohibited act and may be subject to civil and/or criminal penalties. If, on the other hand, the person makes a reasonable effort to learn more about the resource before buying or receiving it, but despite that effort does not know and has no reasonable basis to know that the resource is from Federal land, then that person has not committed a prohibited act and would not be subject to civil and/or criminal penalties.

101. *Comment:* A commenter asked how the bureaus would monitor for violations and enforce the Act.

*Bureau response:* The bureaus will manage for violations of the Act and regulations as any other resource investigation by professional law enforcement staff working closely with resource specialists and other agency personnel. Bureaus may issue citations to persons when law enforcement personnel have probable cause to believe that such persons committed a prohibited act. In some situations, the case may go before a magistrate.

102. *Comment:* A large number of commenters stated that the bureaus should support, not penalize, amateur collecting.

*Bureau response:* Congress and the bureaus agree. Language in the final regulation reinforces that the bureaus support amateur paleontology. These provisions address public education and outreach, collaboration with various communities, and casual collecting. As an example, NPS engages in a partnership with the Paleontological Society and Society for Vertebrate Paleontology to create a program for professional, student, and amateur paleontologists to assist with paleontology-related projects in parks. Amateur collecting can readily occur in accordance with the Act and the final regulations.

103. *Comment:* One commenter asked about the consequences for educators, including paleontologists, using fossils collected from public land as educational tools.

*Bureau response:* If the commenter is referring to fossils collected prior to enactment of the Act, then the laws and regulations applicable at that time will still apply to those fossils, rather than the Act and the final regulations. If the fossils were collected after enactment of the Act, there will be no adverse consequences if the educator collects the fossil in accordance with the Act and this regulation. If, on the other hand, the educator collected the fossils in violation of the Act and these regulations, then that educator may be subject to civil or criminal penalties.

104. *Comment:* A commenter suggested that the regulation should include a provision allowing persons who collected or obtained paleontological resources in violation of the Act and the regulations to return those resources to the Federal land manager without penalty.

*Bureau response:* In response to this comment, the final regulations allow persons who collected or obtained paleontological resources in violation of the Act and the regulation to return those resources to the Federal land manager without penalty, if deemed appropriate by the Federal land manager (see § 49.300(c)). The Federal land manager will determine the details of the return (*i.e.*, when, where, how, etc.).

#### Subpart E—Criminal Penalties

105. *Comment:* One commenter stated that the regulations would not prevent vandalism.

*Bureau response:* The bureaus agree that it is impossible to prevent all vandalism and theft of paleontological resources on Federal lands. Publication of the list of prohibited acts in subpart D (which include damage, altering, and defacing), the criminal penalties in subpart E, and the civil penalties in

subpart F is expected to improve the public's understanding of impermissible activities and, in turn, significantly reduce their occurrence. In addition, other provisions of the Act and the final regulations emphasize increased public education, coordination among the bureaus, and increased work with volunteers including amateur paleontologists to support inventory, monitoring, and educational outreach. These provisions are likely to reduce paleontological resource theft, vandalism, and other damages.

**106. Comment:** Although one commenter asserted that the regulations would require increased law enforcement presence, another commenter contended that the cost of implementing the regulation and Act, including law enforcement, would be too high.

**Bureau response:** In the short term, bureau staff will be implementing the Act and the final regulation. As the bureaus identify increasing need, they will seek to work with additional resources, personnel, volunteers, and partner organizations. For example, NPS works with the Paleontological Society and the Society of Vertebrate Paleontology to foster increased opportunities for volunteers and amateurs to assist the NPS with paleontological projects.

**107. Comment:** A commenter stated that theft and vandalism of fossils are a non-critical issue.

**Bureau response:** The Act explicitly prohibits, with criminal penalties, theft and vandalism of paleontological resources. 16 U.S.C. 470aaa–5. The Act requires the bureaus to issue regulations to carry out the provisions of the Act. 16 U.S.C. 470aaa–9. As a result, the bureaus are required by law to prohibit the theft and vandalism of paleontological resources. Notwithstanding this legal mandate, the bureaus believe that theft and vandalism are a real and present threat to the integrity of paleontological resources on Federal land. For example, the NPS has documented 861 incidents of paleontological resource crimes (theft and vandalism) within 24 NPS units between 2005 and 2014.

**108. Comment:** One commenter suggested that the bureaus should apply criminal penalties in the final regulations retroactively, but others recommended that criminal penalties under the Act should be effective only upon the promulgation of the final regulations.

**Bureau response:** Criminal penalties under the Act became effective on March 30, 2009, and are applicable prior to the effective date of the final

regulation. The bureaus do not have the authority to apply the criminal penalties retroactively—i.e., prior to the passage of the Act. The bureaus may prosecute paleontological resource theft and other crimes that took place prior to March 30, 2009, under other authorities that were in effect at that time and that continue to be in effect.

**109. Comment:** One commenter suggested that the bureaus should penalize persons who engage in scientific misconduct under existing Federal rules and policies rather than under the Act and the final regulations.

**Bureau response:** Congress, in the Act, did not mention or exempt scientific misconduct; therefore, the bureaus disagree with the commenter. In the Act, Congress listed prohibited actions and authorized penalties for persons who engage in those actions. For example, collection of vertebrate fossils without a permit on BLM land is a prohibited act. So is collection under a permit but not complying with the terms and conditions with that permit. If a collector or permittee engages in those actions, then he or she may be subject to penalties.

**110. Comment:** Several commenters contend that the regulations penalize children and other innocent or curious persons who simply pick up fossils, and asked about the effects of the regulations on the use of fossils as an effective motivational learning tool for science and public education.

**Bureau response:** Picking up paleontological resources is casual collecting, as defined and allowed under subpart I of the final regulations. Casual collecting on lands administered by BLM and Reclamation in compliance with subpart I is allowed. Casual collecting on lands administered by NPS and FWS is not allowed and may be subject to civil or criminal penalties. The Federal land manager and prosecutor have discretion whether to seek the imposition of penalties, and the final regulations now contain provisions that allow the return of paleontological resources collected or obtained in violation of the Act and the regulations without penalty, if deemed appropriate by the Federal land manager. These regulations will enhance the use of fossils as a learning tool for science and public education.

**111. Comment:** Several commenters asserted that it would be very easy for the bureaus to penalize adults who accidentally violate the regulation with fines and up to 5 years in prison.

**Bureau response:** A criminal violation must be committed “knowingly,” which means the act was done voluntarily or intentionally and not because of mistake

or accident. Knowledge of the criminal statute governing the conduct is not required. However, both the Federal land manager and prosecutor have discretion whether to seek the imposition of penalties, and the final regulations now contain provisions that allow the return of fossils collected or obtained in violation of the Act and the regulations without penalty, if deemed appropriate by the Federal land manager.

### Subpart F—Civil Penalties

**112. Comment:** One commenter alleged that this subpart addresses Notices of Violation as much as it addresses civil penalties, which is confusing.

**Bureau response:** The Notice of Violation (NOV) is the first step in the assessment of a civil penalty, and is part of ensuring due process for the person believed to have committed a violation. The NOV offers that person an opportunity to provide more information that the Federal land manager, law enforcement personnel, and potentially a court or the Office of Hearings and Appeals, Department of the Interior would use the NOV and any response to it, to determine whether a violation occurred and to assess an appropriate civil penalty.

**113. Comment:** A commenter supports criminal and civil penalties for violators of the final regulations, and asks if there is any private right of action as well.

**Bureau response:** The bureaus appreciate the supportive comment. Under the Act at section 6311(6) and the final regulations at § 49.20, third parties do not have the right to enforce the Act or the regulations.

**114. Comment:** One commenter expressed confusion about when the Federal land manager may issue an NOV.

**Bureau response:** In response to the comment, the bureaus worded § 49.505 to clarify when and how an NOV may be issued.

**115. Comment:** One commenter stated that there might be circumstances when the civil penalty proposed in the NOV pursuant to § 49.510 is actually, upon further consideration, too low and the bureau should adjust upward for the final assessment of civil penalty.

**Bureau response:** Section 49.525(e) authorizes the final assessment of civil penalty to be equal to, less than, or more than the proposed civil penalty. Likewise, under § 49.545(b)(2), the penalty assessed by an administrative law judge is not limited by the civil penalty that was assessed by the Federal land manager.



116. *Comment:* One commenter suggested adding the phrase “of the paleontological resources and paleontological sites” between the words “repair” and “are” in § 49.525(b) so that it would read: “(b) Scientific and commercial values and the cost of response, restoration, and repair of the paleontological resources and paleontological sites are determined under subpart G of this part.”

*Bureau response:* The bureaus agree and adopt the commenter’s suggestion.

117. *Comment:* One commenter proposed alternative regulatory text regarding the procedures for determining scientific and commercial values provided under subpart G.

*Bureau response:* Subpart G provides criteria rather than procedures. However, to clarify the relationship of subparts F and G in response to the comment, the bureaus worded the final regulation at § 49.525(b) to state that civil penalties determined in accordance with subpart F are based in part on the values and costs derived in accordance with subpart G.

118. *Comment:* One commenter pointed out that the use of the word “recovered” in proposed § 49.525(d)(2) has been used in the past by unethical persons to mean “covered back up.” The commenter therefore suggested substituting the words “salvaged” or “collected” rather than “recovered.”

*Bureau response:* The bureaus appreciate and agree with the proposed clarification, and substituted the word “salvaged” for the word “recovered” in the final regulation at § 49.525(d)(2).

119. *Comment:* One commenter noted that proposed § 49.525(e) directs the Federal land manager to determine “scientific or commercial values, but should instead use the word “and.”

*Bureau response:* The bureaus agreed but deleted this provision because it was redundant with § 49.525(b).

120. *Comment:* One commenter suggested adding the word “and” to the list at § 49.530.

*Bureau response:* The bureaus appreciate and adopt this clarifying edit.

121. *Comment:* A commenter asked for clarification of the acronym “OHA.”

*Bureau response:* The final regulation defines and explains this acronym; “OHA” stands for the DOI Office of Hearings and Appeals.

122. *Comment:* One commenter asked for the phrase “via certified mail, return receipt requested, or other verifiable delivery method” to be added to § 49.535(c) and § 49.550(c).

*Bureau response:* The bureaus appreciate the clarifying edit and added the phrase “via registered or certified mail, return receipt requested, or other

delivery service method, delivery receipt requested.” The bureaus have also added the option to file “by electronic means in accordance with an OHA Standing Order which is available on OHA’s website at the web address specified in the final assessment of civil penalty.” This language is for consistency with OHA’s development of an electronic filing system and associated updates to OHA regulations.

123. *Comment:* One commenter suggested that using the term “Ad Hoc Board of Appeals” in § 59.555(a) would eliminate the need to define “Ad Hoc Board of Appeals” in the definition section of the regulation.

*Bureau response:* Although the bureaus appreciate the comment and used the term “Ad Hoc Board of Appeals” in § 49.555(a) of the final regulations, the definitions section of the regulation retains the term for clarification.

124. *Comment:* One commenter suggested that the funds collected under subpart F (Civil Penalties) be available for preparation and curation of the paleontological resources that were the subject of the violation, in addition to the other purposes already listed in § 49.575.

*Bureau response:* The bureaus agree. The Act allows collected penalties to be used for various purposes, including “to protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites.” 16 U.S.C. 470aaa–6(d). Using the funds for preparation, stabilization, and curation falls within these purposes. These costs are also included in the calculation of scientific value under subpart G, which in turn is included in the calculation of civil penalties under subpart F and criminal penalties under subpart E. Therefore, once the penalties are collected, it is logical to apply them to defray those costs. The bureaus have worded the final regulation at § 49.575(a) to incorporate the suggestion.

#### **Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair**

125. *Comment:* Several comments indicated confusion about the purpose of determining scientific and commercial values, as well as the cost of response, restoration, and repair.

*Bureau response:* Determination of scientific and commercial values, as well as the costs of response, restoration and repair, in this regulation and under the Act are only relevant for the calculation of appropriate criminal and civil penalties under this regulation,

and are not relevant for other management concerns. The final regulations now clarify this point via the addition of the phrase “determined for criminal and civil penalties” to the headings for §§ 49.600, 49.605, and 49.610 and the phrase “[i]n determining a criminal or civil penalty” to the text of those sections.

126. *Comment:* Two commenters requested the addition of “preparation and stabilization” costs to the list of costs associated with obtaining the scientific and educational information from the disturbed paleontological resource or site.

*Bureau response:* Preparation and stabilization are included in the costs of response and repair. However, the bureaus added the language as a clarification.

127. *Comment:* One commenter suggested distinguishing scientific value from paleontological value.

*Bureau response:* The final regulation only uses the term “scientific value,” not “paleontological value.” Thus, it is not necessary to discuss the latter term. Nonetheless, as stated in the preamble for the proposed rule, the bureaus view these terms as synonymous for purposes of the Act and the regulations.

128. *Comment:* One commenter suggested that the commercial value of a paleontological resource that is the subject of a prohibited act should not include preparation costs.

*Bureau response:* The final regulation at § 49.605 specifies that the commercial value of a resource is based on comparable sales, appraisal, market value, or like information. Thus, if the fossil that is the subject of a prohibited action has not been prepared, its commercial value will reflect the non-preparation. Conversely, if the fossil has been prepared, its commercial value will reflect that. If it is not possible to determine the commercial value, then the value will be based on § 49.600 (scientific value), which does include preparation costs, or the cost of response, restoration, and repair determined in accordance with § 49.610.

129. *Comment:* Commenters suggested clarifying revisions to § 49.610.

*Bureau response:* The bureaus agreed with these suggestions and incorporated the clarifications into the final regulation.

#### **Subpart H—Forfeiture and Rewards**

130. *Comment:* A commenter asked if a witness can earn a reward for reporting anything that looks like a violation of the regulations.

*Bureau response:* No, under subpart H, the bureaus may pay a reward to a

person who furnishes information that leads to an actual finding of a civil violation or to a criminal conviction.

#### **Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

Sixty percent of the comments received by the Department on the proposed rule addressed the provision of the Act that allows casual collection on lands administered by BLM and Reclamation. These comments overwhelmingly expressed a desire that these bureaus should allow the public to collect common non-vertebrate paleontological resources with the least amount of interference as possible. Both amateur and professional paleontologists shared this sentiment. The final rule accommodates many suggestions offered by the public.

**131. Comment:** Some commenters pointed out that the Act is clear about where casual collection is and is not allowed and that proposed § 49.800, stating that casual collection is not allowed on lands managed by the NPS or FWS, was superfluous, whereas other commenters did not recognize that casual collection is not allowed on those lands.

**Bureau response:** The bureaus have retained § 49.800 to affirm that casual collecting is not allowed on lands that are administered by the NPS or FWS.

**132. Comment:** Several commenters suggested that the NPS and FWS should “formally relinquish” authority over casual collecting because it is not allowed on NPS and FWS lands.

**Bureau response:** The NPS and FWS do not assert authority over casual collecting in areas administered by BLM or Reclamation, except in areas subject to an agreement between the bureaus, but all bureaus will continue to coordinate to ensure that casual collecting activities occur only in compliance with the Act and the final regulations.

**133. Comment:** Several commenters asked why BLM national monuments, national conservation areas, outstanding natural areas, or forest reserves would automatically be closed to casual collecting, when the Act does not provide that restriction.

**Bureau response:** The commenters are correct that the Act does not provide that restriction, and the bureaus have removed this provision. Under the Act, all BLM-administered lands are open to casual collection unless they are closed by statute or by area closures that are authorized by statute, such as those at 43 CFR subpart 8364, or by this

regulation at § 49.40. These closures may apply to individual BLM national monuments, national conservation areas, outstanding natural areas, forest reserves, and other areas when provided for in the enabling legislation or presidential declaration for those areas, or when the BLM establishes an area as closed to casual collection through BLM’s land use planning process set forth at 43 CFR part 1600.

**134. Comment:** Some commenters offered or suggested revisions to the definition of casual collection.

**Bureau response:** The definition of casual collection at § 49.810(a) is taken directly from section 6301 of the Act.

**135. Comment:** Several commenters suggested that the bureaus require prospective casual collectors to obtain a day license or simple permit, or to submit a post-collection report.

**Bureau response:** The Act specifically excludes casual collecting from the permit requirement, so the bureaus concluded that even a simple permit or license requirement for casual collecting would conflict with Congressional intent. While the bureaus recognize that these commenters are concerned about the impacts of casual collecting on scientifically important specimens, the regulations and existing statutes provide procedures for the bureaus to protect and preserve scientifically important paleontological resources, including non-vertebrate paleontological resources.

**136. Comment:** Many commenters refuted a statement in the proposed rule that explained that if a collector thought that a non-vertebrate fossil might be uncommon they must leave it in the field. Both amateur and professional paleontologists objected to this statement because the fossil might be lost and doing so would not be in keeping with the spirit of the Act. Additionally, many professional paleontologists who specialize in non-vertebrate fossils were adamant that amateur paleontologists are critical to the pursuit of paleontological science because they bring discoveries directly to them, rather than leaving fossils in the field.

**Bureau response:** The bureaus recognize that unless determined through a prior area closure or restriction, it is difficult to know whether a non-vertebrate paleontological resource is common, and so encourage collectors to share potentially important discoveries with knowledgeable non-vertebrate paleontologists to determine if the resource is not common, even when it means collecting the resource to accomplish this goal. The bureaus agree

that amateur paleontologists are important to preserving paleontological resources, and therefore the bureaus recognize that these amateurs are partners in implementing the Act. In order to preserve important paleontological resources, the BLM and Reclamation will solicit input from both professional and amateur partners in order to determine whether the resource is common or not.

**137. Comment:** Some commenters expressed concern that under the Act casual collection on BLM-administered lands is more restrictive than prior to passage of the Act.

**Bureau response:** Prior to passage of the Act and enactment of these regulations, BLM allowed casual collecting as a matter of discretion on BLM-administered lands. Under the Act and § 49.805(a) of the regulation, casual collection of common non-vertebrate paleontological resources by the public is specifically authorized, so casual collection has expanded, not contracted. The Act provides for casual collection of reasonable amounts of common non-vertebrate paleontological resources on BLM-administered land for non-commercial use, except for areas closed by other statutes, executive orders, or in accordance with this regulation. Any closures or restrictions to casual collection must be in accordance with this regulation or other statutes.

**138. Comment:** A commenter wanted to know why rules for casual collection might be different on Bureau of Reclamation lands.

**Bureau response:** Prior to passage of the Act, Reclamation did not allow casual collection on lands that bureau administers. Section 49.805(b) allows the bureau to protect these lands for their intended use, water resource management. Therefore, casual collection is only allowed in designated areas following processes defined in Reclamation’s public conduct rule at 43 CFR 423.

**139. Comment:** Some commenters asked for the option to sell collections made through casual use.

**Bureau response:** Both the Act and the final rule are clear that paleontological resources may only be collected for non-commercial purposes. A person may not sell a paleontological resource that they know or should know was collected on public lands.

**140. Comment:** Some commenters stated that the 25-pound reasonable amount limit should apply to the non-vertebrate fossils being collected, but not to the rock or matrix in which the fossils are embedded. Many also argued that to remove fossils from rock matrix in the field would require unreasonable

effort and would often damage the fossil that they were trying to collect. These respondents pointed out that the collection, while exceeding 25 pounds, would still only contain one or two non-vertebrate fossils. Applying the 25-pound limit to the entire rock would put many common non-vertebrate fossils out of reach of amateur collectors, or threaten the fossils because of the need for unnecessary field preparation.

**Bureau response:** Section 49.810(a)(2) of the final regulation states that a collector may remove up to 25 pounds of common non-vertebrate paleontological resources. This is the same amount included in the proposed rule. However, the bureaus have clarified that a collector may remove individual slabs or cobbles of rock that exceed 25 pounds in order to prevent the loss or breakage of otherwise good specimens. The collector may still create only negligible disturbance.

**141. Comment:** A large number of commenters were concerned about the proposed definition of negligible disturbance and pointed out that establishing areas of appropriate disturbance could not be one-size-fits-all and that using the regulations to establish predetermined areas would be arbitrary.

**Bureau response:** Section 49.810(a)(3) of the final rule states that negligible disturbance means little or no change to the surface of the land and minimal or no effect to natural and cultural resources. This definition is similar to the definition provided by the U.S. Forest Service in 36 CFR 291.5 under the same statute, and is consistent with the use of the term in other regulations for other BLM programs, including 43 CFR 2801.5, 2881.5, and 3819.5. The Federal land manager, using procedures at § 49.810(b), may establish specific limits to disturbance in specific areas.

**142. Comment:** Many commenters expressed concern about limitations to the types of hand tools that casual collectors may use, saying that such limits were too restrictive and exceeded the scope of the Act.

**Bureau response:** The definition provided at § 49.810(a)(5) removes the requirement that a hand tool must be small or limited to a hammer, trowel, or sieve. Regardless of the size of a hand tool, the person engaged in casual collection must not create anything greater than negligible disturbance as the final regulation defines this term.

**143. Comment:** Some respondents expressed dismay that even small power tools may not be used in support of casual collection because they are highly efficient and produce less disturbance than some hand tools.

**Bureau response:** The Act does not permit the use of power tools in support of casual collection. The definition provided at § 49.810(a)(5) retains the clarification that non-powered hand tool means without a motor, engine, or other power source.

**144. Comment:** Many commenters were concerned that casual collection could result in the overuse of an area or depletion of a paleontological resource.

**Bureau response:** Section 49.810(b) of the final rule states that the Federal land manager may establish additional limitations to casual collecting in order to preserve paleontological or other resources. Examples include reducing the maximum weight defined for reasonable amount, decreasing the threshold for negligible disturbance, limiting depth of allowable disturbance, limiting the use of specific tools, defining what is common in a specific area, establishing time or duration limits for collecting, establishing limits to avoid cumulative effects, and establishing parameters for safety. The bureaus may also establish limits to fossil collection through other area closure authorities, including § 47.40 of this regulation. The bureau will make public any information about limitations or restrictions to casual collection, identifying what the restrictions are and where they apply.

**145. Comment:** Some commenters expressed a desire to share their personal collections of non-vertebrate fossils with professional and educational groups, but fear having some or all of their collection confiscated by the bureaus because someone might determine that a fossil is not common.

**Bureau response:** The bureaus want to encourage collectors to share their collections, use them for educational purposes, and have them identified by qualified professionals. Therefore, the bureaus would determine that only non-vertebrate specimens found on public land that offer new information about the history of life on earth are not common. Avocational paleontologists are encouraged to build personal collections of common non-vertebrate paleontological resources collected in a manner consistent with this part.

**146. Comment:** Commenters wanted to know if academic institutions, such as geology departments, could build collections of casually collected non-vertebrate fossils.

**Bureau response:** Repositories, including geology departments and educational institutions, are encouraged to apply for a permit when they build collections of common non-vertebrate paleontological resources from lands

administered by BLM or Reclamation. However, they may accept casually collected specimens in order to further public education. Repositories may accept these common non-vertebrate specimens for teaching collections or other educational uses without notifying the BLM or Reclamation, but should identify or acknowledge the appropriate bureau in subsequent presentations or displays. Specimens that are collected legally under this part, but are subsequently found to be uncommon, should be transferred to an approved repository and reported to the bureau that manages the land from which they were found.

**147. Comment:** Several commenters wanted to know who determines which fossils are not common. Many commenters were concerned that the Federal land manager might not be qualified to determine which fossils are not common. Some commenters stated that professional paleontologists, not the Federal land manager, should determine what is not common. Many asked for guidance in determining which fossils are and which fossils are not common.

**Bureau response:** The Act requires the bureaus to retain the responsibility to determine which non-vertebrate paleontological resources are not common. However, determining what is common or not common should always be done in consultation with a qualified paleontologist. What is not common should be determined by the scientific importance of the specimen and not simply on its rarity or condition of preservation. Thus, some fragments of otherwise rare specimens might be common. An exceptionally well preserved, unusual, and even “rare” specimen may be common according to this regulation if it does not offer important or new information about the history of life on Earth. Generally, uncommon fossils are those that are scientifically rare or unique. In cases where the qualified paleontologist and the collector do not agree on the importance of the specimen, or where multiple paleontologists disagree, the Federal land manager makes the final determination of what is not common.

### Summary of Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, the bureaus made the following substantive changes in the final rule. Additionally, the bureaus made small, non-substantive stylistic, formatting, and structural changes to better serve the reader. For a more detailed discussion of these changes, refer to the preceding section entitled “Summary of

Public Comments” and bureau responses, organized by subpart.

Title 43	Description of change
Subpart A .....	Changed heading from “Managing, Protecting, and Preserving Paleontological Resources” to “Preserving, Managing, and Protecting Paleontological Resources.”
§ 49.1 .....	Replaced “fossils” with “paleontological resources” here and throughout the final rule to clarify that the rule applies to paleontological resources, which are a subset of fossils.
§ 49.5 .....	Replaced the term “authorized officer” with “Federal land manager” for clarification and consistency with other laws and regulations.
§ 49.5 .....	Replaced the term “curatorial services” with “curation.” DOI reverted to the language used by USDA at 36 CFR 291.5 in order to remain consistent with the Forest Service, existing DOI policy at 411 DM, and with the Act. Previous versions, including the proposed rule, stated the same information, but DOI found that the USDA version of the definition provided the clearest definition of curation.
§ 49.5 .....	Clarified definitions of “collection,” “consumptive analysis,” “day,” “fossilized,” and “nature.”
§ 49.5 .....	Added definitions of “deposit,” “preparation,” and “working collection.”
§ 49.15 .....	Added language to clarify that on lands administered by BLM or Reclamation, certain fossilized mineral materials, including petrified wood, and conodonts (microscopic remains of a Paleozoic-era eel-like animal) are not subject to these regulations.
§ 49.25 .....	Streamlined and simplified the process of determining when specific locality information may be disclosed by eliminating the requirement for the Federal land manager to enter into written agreements with each party seeking disclosure; authorizing the Federal land manager to define bureau confidentiality requirements consistent with the regulation; and clarifying that the disclosure of information in furtherance of the Act does not constitute an official public disclosure under the Freedom of Information Act.
Subpart B .....	Corrected section-numbering sequence throughout this subpart. In the proposed rule, these sections were numbered §§ 49.50 through 49.95. In the final, they are numbered §§ 49.100 through 49.145. Subsequent citations in this table refer to the corrected numbers.
§ 49.100 .....	Clarified that a permit may be required for paleontological research or consulting activities and eliminated the requirement for a permit for disturbance because the term “disturbance” was unclear in this context.
§ 49.105(b) .....	Clarified that a person not meeting the criteria to receive a permit can perform work under an issued permit when appropriately supervised by a permittee.
§ 49.110 .....	Eliminated the requirement contained in the proposed regulation that would have required permit applicants to possess a graduate degree.
§ 49.115 .....	Simplified permit application requirements by using concise language, and by not requiring that permit applicants include written verification of collection acceptance from a repository in their permit applications. The verification from the repository is a condition of permit approval, not the permit application.
§ 49.120 .....	Removed the repository approval process from the permit approval process, in order to speed up and simplify the permit decision. Under the final regulation, repository approval may happen at any time.
§ 49.125(a)(1) .....	Clarified that both permittees and approved repositories named in the permit are subject to the Act and regulations’ confidentiality requirements, and that they may disclose information if the Federal land manager determines that the disclosure is consistent with applicable bureau policy.
§ 49.125(a)(2) .....	Removed a permittee reporting requirement regarding persons conducting activities under a permit (proposed § 49.75(a)(2)), and replaced it with the requirement to maintain a safe and secure worksite.
§ 49.125(a)(8) .....	Added requirement for permittees to safeguard collections and related data until the collection is deposited in the approved repository named in the permit.
§ 49.125(a)(10) .....	Clarified that a permittee cannot also act as the repository official who signs the receipt for collections.
§ 49.125(a)(11) .....	Added requirement that copy of the permit and other associated records must accompany the collection during transport and be provided to the approved repository named in the permit.
§ 49.125(a)(13) .....	Clarified that permittees are responsible for the costs of the permitted activity, including initial curation costs. Proposed rule stated that permittees are responsible for all curation costs.
§ 49.125(e) .....	Added permit modification, suspension, and revocation to the possible consequences of permittee non-compliance with the terms of a permit.
§ 49.130 .....	Added a provision that bureaus may modify permits when there is a <i>potential</i> violation of a term or condition.
§ 49.140 .....	Clarified the permit-related decisions by NPS may be reconsidered, rather than appealed, to be consistent with other NPS permitting practices.
§ 49.200(a) .....	Clarified that, under this regulation, repositories are approved to receive a collection, not generally approved for everything.
§ 49.200(c) .....	Added authorization for Federal land managers to move paleontological resource collections that do not further paleontological knowledge, public education, or management of paleontological resources into working collections.
§ 49.205 .....	Deleted the language requiring repository approval during the permit approval process, in order to provide more flexibility and speed up permit decisions. Also, simplified the requirements for approval of a proposed repository. Also, amended the process for Federal land managers to follow in the event of a repository’s lack of compliance with the approval criteria.
§ 49.210 .....	Eliminated entire section that was in the proposed rule regarding the process for depositing a collection at an approved repository because of public comment and because it was redundant with § 49.125(a)(10). This section now addresses the terms and conditions of agreements between the bureaus and repositories, which were formerly addressed by § 49.215.
§ 49.210(b)(5) .....	Now clarifies that determinations related to disclosure of specific locality information pursuant to § 49.25 are made by the Federal land manager.
§ 49.210(b)(7) .....	Now clarifies that agreements between bureaus and approved repositories must address loans to other entities.
§ 49.210(b)(10) .....	Now contains detail about the provision of publications or reports to the bureaus.
§ 49.210(b)(12) .....	Added affirmative requirement that repository employees must work to preserve and protect specimens in their care using best professional practices.
§ 49.215 .....	With the elimination of one of the sections from the proposed rule (§ 49.210), the bureaus were able to move all subsequent sections up in this final rule. Thus, this section was, in the proposed rule, § 49.220.

Title 43	Description of change
§ 49.215(a) .....	Streamlined this language from the proposed rule to make it shorter, simpler, and less redundant with the definitions section.
§ 49.215(b) .....	Included language to clarify that the Federal land manager may remove specimens from museum collections and assign them to working collections. This will reduce burdens on repositories.
§ 49.215(c) .....	Added clarifying language regarding the fees that repositories may charge to recover their costs.
§ 49.300(b) .....	Added option for a person to return paleontological resources that were collected or obtained in violation of the Act without penalty to the Federal land manager if deemed appropriate by the Federal land manager.
§ 49.400 .....	Streamlined the language regarding the effective date of this criminal penalties subpart and added minor clarifying edits to enhance wording consistency between this section and subpart G.
§ 49.500–49.535 ....	Minor clarifying edits such as reorganization of a sentence, making headings lower-case, elimination of redundant clauses and sentences, and simplification of language.
§ 49.540 .....	Added new paragraphs (c) and (d) for improved consistency between this subpart's hearing provisions and existing DOI regulations pertaining to hearings.
§ 49.575(a) .....	Added “prepare” and “curate” to the list of actions that can be funded by collected civil penalties. These are subsets of the terms “protect,” “restore,” and “repair.” These latter terms appeared in the proposed regulation and appear in the Act, but the final regulation includes “prepare” and “curate” as well, for the sake of clarity.
Subpart G .....	Throughout this subpart, added language to clarify that this subpart defines scientific value, commercial value, and the cost of response, restoration and repair only for determining civil and criminal penalties, not for any other purpose.
§ 49.600 .....	Clarifies that scientific value is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value.
§ 49.605 .....	Clarifies that commercial value is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value.
§ 49.610 .....	Clarifies that cost of response, restoration, and repair is determined for the calculation of criminal and civil penalties, and clarifies the various components for determining this value. Adds preparation and stabilization to the calculation of this cost.
§ 49.700 .....	Removes the reference to “stolen Federal property” because it is unnecessary for purposes of this section.
§ 49.805(a) .....	Removed list of specific types of BLM-administered lands, such as national monuments, national conservation areas, outstanding natural areas, or forest reserves that BLM had proposed for closure to casual collection by regulation. All BLM-managed public lands are open to casual collection unless specifically closed by statute or through the process at § 49.40 of these regulations.
§ 49.810(a)(1) .....	Added “non-vertebrate paleontological resources” as a shorthand for “invertebrate or plant paleontological resources” for simplicity and streamlining.
§ 49.810(a)(2) .....	Removed limitation that a person may collect only 100 pounds of common plant and invertebrate paleontological resources per year. Also allows collectors to remove a slab or cobble of rock that exceeds 25 pounds in order to preserve the integrity of an embedded specimen.
§ 49.810(a)(3) .....	Removed the language that was in the proposed rule regarding the size of and distance between disturbed areas as a component of the definition of negligible disturbance.
§ 49.810(a)(5) .....	Removed reference to the size of hand tools to be more consistent with the Act, which focused on the non-powered aspect of the hand tools rather than their size.
§ 49.810(c) .....	Established that Federal land managers will consult with knowledgeable paleontologists to determine which plant and invertebrate paleontological resources are not common.

### Compliance With Other Laws, Executive Orders, and Departmental Policy

#### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563

emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOIS has developed this rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act (RFA)*

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report titled “Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis in Support of Executive Order 12866 and Regulatory Flexibility Act Compliance,” which can be viewed at [www.blm.gov/paleontology](http://www.blm.gov/paleontology) by clicking on the link entitled “Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis in Support of Executive Order 12866 and Regulatory Flexibility Act Compliance.”

This report is also available via <http://www.regulations.gov> in Docket NPS–2016–0003.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act (UMRA)*

This rule does not impose an unfunded mandate on State, local, or

Tribal governments or the private sector of more than \$100 million per year. This rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. The rule addresses the management of paleontological resources on and from lands managed by BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. A statement containing information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (Executive Order 12630)*

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is not a government action capable of interfering with constitutionally protected property rights. It would implement the new statutory authority for managing, preserving, and protecting paleontological resources on Federal lands and is consistent with prior policies, procedures, and practices for the collection and curation of paleontological resources on Federal land. Private property is not affected. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule addresses the management of paleontological resources on and from lands managed by the BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

#### *Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)*

DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and Tribal sovereignty. In accordance with Executive Order 13175 and DOI's consultation policy, DOI readily acknowledges its responsibility to communicate meaningfully with federally recognized Indian Tribes on a government-to-government basis.

The PRPA and DOI regulations in this rule only apply to Federal land, which is defined in the PRPA and the regulations to expressly exclude Indian land. 16 U.S.C. 470aaa. Indian land is defined as "land of federally recognized Indian Tribes or Indian individuals which is either held in trust by the United States or subject to a restriction against alienation imposed by the United States." 16 U.S.C. 470aaa. Notwithstanding this exclusion in the PRPA and regulations, DOI understands that many federally administered lands are ancestral Tribal lands that could be impacted by paleontological activities. For this reason, DOI prepared a Dear Tribal Leader Letter to formally notify Tribal leaders from each of the federally recognized Tribes that the proposed rule was forthcoming. DOI distributed the letter in November 2016, several weeks prior to the publication date of the proposed rule in December, to give Tribal leaders sufficient time to familiarize themselves with the Act and background material. The letter included weblinks to additional resources regarding the development of the proposed rule, identified subject matter experts, and invited Tribes to contact those experts directly. DOI also notified the National Association of Tribal Historic Preservation Officers of the forthcoming proposed rule. Two Tribes (the Shingle Springs Band of Miwok Indians and the San Carlos Apache) requested to be notified when the proposed rule published and were so notified. Two Tribes (Pueblo of San Felipe and Santa Clara Pueblo) submitted written comments on the proposed rule. In May 2017, DOI officials met with one Tribe (Pueblo of San Felipe) that requested consultation to discuss the Tribal implications of the proposed rule. Notes from this meeting were shared and verified for accuracy with the Tribe. Comments received from Tribes and DOI responses and actions taken as a result of those comments are

provided below and in the comment summaries above.

Comments from two Tribes expressed concern about the potential adverse effects of collection and curation versus *in situ* preservation of paleontological resources. In response to these concerns, the final rule (1) conditions the Federal land manager's approval of proposed collection on whether the manner of collection would avoid or minimize adverse effects to significant natural or cultural resources; and (2) conditions the collection of paleontological resources on an explanation of how the proposed collection would further paleontological knowledge or public education, or management of paleontological resources, and on pre-agreement from a proposed repository to receive the collection.

Comments from Tribes also emphasized the importance of maintaining the confidentiality of specific location information. In response to these concerns, the final rule (1) clarifies that both permittees and approved repositories named in the permit are subject to confidentiality requirements; and (2) includes a requirement for permittees to safeguard collections and related data until the collection is deposited in the approved repository named in the permit.

There is also an opportunity for consultation on individual permit applications. The final rule requires that, when DOI receives an application for a permit, the Federal land manager evaluate the permit application and analyze impacts "in accordance with applicable laws, regulations, and policies." See § 49.120. Therefore, the Federal Land Manager will evaluate whether the permit issuance would cause a significant impact to one or more Tribes and will consult with potentially affected Tribes prior to issuing the permit under Executive Order 13175.

#### *Paperwork Reduction Act of 1995 (PRA)*

This final rule contains a collection of information that DOI has submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). DOI may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements in this rule and assigned OMB Control Number 1093-0008.

OMB has reviewed and approved the information collection requirements associated with the NPS' application

and reports for paleontological permits (OMB Control Number 1024–0236).

This final rule authorizes DOI to collect the following information associated with paleontological permits for work on lands administered by the BLM, Reclamation, and FWS:

**Paleontology Permit Application (§ 49.115).** Permit applicants proposing to work in areas administered by BLM, Reclamation, or FWS must provide the information requested by DI Form 9002 (Paleontology Permit Application). Such information includes:

(1) Applicant's name, affiliation, and contact information.

(2) Description of the applicant's qualifications to include a current resume for the applicant and all other persons who will oversee fieldwork and other work, and information on the applicant's past performance on previous permits.

(3) Maps and other location information, and estimated start and end dates of proposed work.

(4) Description, purpose, and methodology of proposed work, including a detailed scope of work or research plan for the proposed activity, logistical information, methods that will be employed to explore for or remove the paleontological resources, proposed content and nature of any collection to be made under the permit.

(5) Information about the proposed repository.

(6) Description of anticipated costs, including bonding information.

**Locality information (§ 49.125(a)(1) & (6)).** Permittee will record locality information on DI Form 9004 (Paleontology Locality Record), or in another format approved by the bureau in the permit that captures the same information.

**Resource damage or theft (§ 49.125(a)(7)).** Permittee must report suspected or apparent resource damage or theft of paleontological or other resources to the Federal land manager as soon as possible, but not to exceed 48

hours, after learning of the suspected or apparent damage or theft.

**Repository receipt (§ 49.125(a)(10) & (11)).** Permittee must deposit the collection in the approved repository named in the permit by the date specified in the permit, and provide the bureau with DI Form 9007 (Repository Receipt of Collections (Paleontology)), which includes a certification by the permittee that the collection and other associated records were transferred to the repository and a certification by the approved repository's authorized official that the collection was received.

**List and description of paleontological resources (§ 49.125(a)(12)).** If the permittee has not transferred the collection to the approved repository named in the permit by the date specified in the permit, the permittee must provide the Federal land manager a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

**Reports (§ 49.125(a)(14)).** Permittees conducting activities on lands administered by BLM, Reclamation, or FWS must submit reports to the bureaus using DI Form 9006 (Paleontology Permit Report) as a cover sheet for researchers' and consultants' permit reports.

**Amendments to permits (§ 49.130(a)).** Permittees may request a modification to a permit. Modification requests will include permittee name, permit number, and the reason(s) for the modification request.

**Objecting to a Notice of Violation (§ 49.515(a) & (b)).** When a person receives a notice of violation, the person has 30 days from the date the notice was received to object by submitting to the Federal land manager documentation to support the position that the person did not commit a violation or that the proposed penalty should be reduced or eliminated.

**Responding to a civil penalty (§ 49.535(a) & (b)).** A person may

request a hearing on the Federal land manager's final assessment of a civil penalty by filing a request for hearing via registered or certified mail (return receipt requested or other delivery service method, delivery receipt requested) to the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, at the address specified in the final assessment of civil penalty, or by electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty. The request for hearing must include the following information:

(1) The reasons for challenging the final assessment;

(2) The relief sought and the basis for the relief;

(3) A copy of the notice of civil violation and proposed civil penalty assessment;

(4) A copy of any objection and supporting documentation filed under § 49.515(a) & (b);

(5) A copy of the final assessment of civil penalty; and

(6) A certificate of service acknowledging service of the request for hearing with the accompanying documentation on the Office of the Solicitor.

**Title:** Application and Reports for Paleontological Permits, 43 CFR part 49. OMB Control No.: 1093–0008.

**Form Number(s):** Forms DI–9002, DI–9003, DI–9004, DI–9005, DI–9006, and DI–9007.

**Type of Review:** New.

**Description of Respondents:** Individuals; organizations; businesses (museums and universities); State, Tribal, or local governments that collect paleontological resources or disturb paleontological sites on DOI lands.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**Frequency of Collection:** On occasion.

**Estimated Nonhour Cost Burden:** None.

Requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
Permit Application—DI–9002—§ 49.115; DI–9003—§ 49.125(a); DI–9005—§ 49.125(d) .....	440	4	1,760
Locality Information—DI–9004—§ 49.125(a)(1)&(6) .....	300	1	300
Report Resource Damage or Theft—§ 49.125(a)(7) .....	50	1	50
Repository Receipt—DI–9007—§ 49.125(a)(10)&(11) .....	300	1	300
List and Description of Paleontological Resources—§ 49.125(a)(12) .....	100	1	100
Permit Report—DI–9006, § 49.125(a)(14) .....	440	5	2,200
Request Amendment to Permit—§ 49.130(a) .....	200	1	200
Objecting to a Notice of Violation—§ 49.515(a)&(b) .....	10	10	100
Responding to a Civil Penalty—§ 49.535(a)&(b) .....	5	10	50
Totals .....	1,845	.....	5,060



A proposed rule, soliciting comments on this collection of information for 30 days, was published on December 7, 2016 (81 FR 88173). Of the 1,611 comments received on the proposed rulemaking, 4 comments were related to the information collection and associated forms. A summary of those comments and our responses are as follows:

*Comment:* Three commenters asked the bureaus to make permitting more consistent by adopting the same Paleontology Permit Application (Form DI-9002) across all bureaus, instead of having the NPS continue to use its existing permit request system.

*Response:* The NPS uses an online permit system (called the Research Permit and Reporting System) that requires the same information that is collected by Form DI-9002, so applicants for a paleontology permit should not see a difference in the time it takes to request a permit.

*Comment:* Three commenters expressed apprehension that the Federal land manager might require more information on the Form DI-9002 than

is possible to provide, such as, (1) the exact location where collection will occur during a survey; or, (2) be required to provide a detailed list of fossil taxa that will be recovered.

*Response:* The information that an applicant provides on a permit application is necessary so that the Federal land manager can identify the extent and nature of work and its potential impacts. Permit applicants and the Federal land manager need to communicate with each other so that each may understand the specific needs of, or seek clarification from, the other.

*Comment:* One commenter asked whether a copy of the Notice to Proceed (Paleontology) (Form DI-9005) should be submitted with a permit report.

*Response:* Copies of DI Form 9005 should be provided in all reports, especially final permit reports.

*Comment:* Two commenters asked that the Repository Receipt for Collections (Form DI-9007) be provided to the bureaus by the permittee, not the repository, as this is a permit responsibility and should not create a separate burden for the repository.

*Response:* The bureaus agree. Submission of Form DI-9007 has always been, and will continue to be, the responsibility of the permittee. Copies of Form DI-9007 should be shared with the repository, but it is not the repository's responsibility to produce or submit the form.

In summary, DOI accepted all comments pertaining to information collection from the public and incorporated them into the final rulemaking and forms. In addition, DOI reviewed all aspects of the forms and made a number of changes for clarity or made revisions where duplication was found. As a result, some of the form numbers have changed. To note, Forms DI-9005 and DI-9006 in the proposed rule were consolidated into one form, now Form DI-9006, Paleontology Permit Report, to be used as a cover sheet. Instructions for all forms were rewritten to align with the revisions to the forms. A table summarizing the form changes from the notice of proposed rule stage to the final rule follows:

TABLE SUMMARIZING THE DI FORM CHANGES

Notice of proposed rulemaking (12/7/2016) DI form Nos. and titles	Final rule: Changes to DI form Nos. and titles
9002—Paleontological Resource Use Permit Application .....	9002—Paleontology Permit Application.
9003—Paleontological Resource Use Permit .....	9003—Paleontology Permit.
9004—Paleontological Locality Form .....	9004—Paleontology Locality Record.
9005—Paleontological Permit Report Cover Sheet .....	9005—Notice to Proceed (Paleontology).
9006—Paleontology Consulting Report Cover Sheet .....	9006—Paleontology Permit Report Cover Sheet.
9007—Paleontology Work Notice to Proceed .....	9007—Repository Receipt of Collections (Paleontology).
9008—Repository Receipt for Collections (Paleontology) .....	

One additional change to the information collection is the deletion of the requirement to notify the bureaus of a change of personnel (previously referenced as § 49.75(a)(2), Change of Personnel in the proposed rule). Permit applicants are already required to submit the names and credentials of all individuals who will be responsible for supervising or conducting work under the permit when they apply for a permit. Burden hours and responses have been adjusted to acknowledge the deletion of this requirement. This final rule, at 43 CFR part 49, includes the updated information collection requirements for managing paleontological resources on DOI lands.

As part of our continuing effort to reduce paperwork and respondent burdens, DOI invites the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including

whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Departmental Information Collection Clearance Officer, Office of the Secretary/Office of the Chief Information Officer, 1849 C Street NW, Washington, DC 20240. Please reference OMB Control Number

1093–0008 in the subject line of your comments.”

*The Privacy Act of 1974 (5 U.S.C. 552)*

Records for the Paleontological Resources Preservation Act are maintained in a system of record. Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), DOI is issuing a public notice in the **Federal Register** of its intent to create the Privacy Act system of records titled, INTERIOR/DOI–20, Paleontological Resources Preservation System.

*Effects on the Energy Supply (Executive Order 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. DOI has determined that this rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development and will have no effect on the volume or consumption

of energy supplies. A Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule is categorically excluded from National Environmental Policy Act analysis under DOI categorical exclusion, 43 CFR 46.210(i), which covers “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.”

The categorical exclusion is appropriate and applicable for the following reasons. Several of the provisions of this rule are specifically administrative, financial, legal, or procedural in nature, and therefore are subject to the first part of the categorical exclusion. For instance, the provisions for permit modification, suspension, revocation, or cancellation are all administrative or procedural in character, as are the rule’s provisions establishing procedures to challenge any of these decisions. Similarly, the rule sets forth specifics of the administration of civil and criminal penalties associated with violation of the provisions of the rule and of PRPA.

Both the establishment of the permit system, and future decisions to close lands to casual collecting (and, conversely, to open lands to casual collecting where that use is not already authorized) are subject to the second part of the categorical exclusion. Issuance of a permit (whether programmatic or individual in scope) for the collection of paleontological resources itself requires agency compliance with NEPA. Moreover, a permit must contain permit conditions, supported by appropriate NEPA analysis, that ensure the underlying project or action will continue to meet regulatory requirements throughout the entire duration of the permit. Likewise, any decision to close or open lands to casual collecting also requires agency compliance with NEPA and may contain conditions, supported by appropriate NEPA analysis, that ensure the appropriate management of these resources. Because the environmental effects of this rule are too speculative and conjectural to lend themselves to meaningful analysis, and the environmental consequences of any of these decisions will later be subject to the NEPA process at the time the permit application or proposed opening or closing to casual collecting is evaluated

and before a decision is made, the rule is subject to the second part of DOI categorical exclusion, 43 CFR 46.210(i).

Pursuant to 43 CFR 46.205(c), DOI has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances, at 43 CFR 46.215, and has found that none applies to this rule. Therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required for this rulemaking.

Even though neither an EA nor an EIS must be prepared for this rule, the BLM elected to prepare an EA to inform decision-makers regarding the possible effects of two specific provisions as applied to the public lands BLM manages, as allowed under DOI’s regulations implementing NEPA, 43 CFR 46.300(b)(1). BLM-administered lands are open to casual collection of paleontological resources unless specifically closed by a site-specific decision. As such, casual collection has been and will continue to occur on certain public lands.

PRPA provides specific authority and limits under which this activity can take place. In particular, PRPA allows for “casual collecting,” which is defined as “the collecting of a reasonable amount of common invertebrates and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth’s surface and other resources” (Pub. L. 111–11, section 6301(1), 123 Stat. 1172), and specifies that the Secretary of the Interior is to determine how these terms are to be defined. The rule’s definitions for “negligible disturbance” and “reasonable amount” describe the conditions limiting any casual collection activities on certain public lands managed by the BLM. The BLM prepared an EA for these definitions. The EA may be found at [www.blm.gov/paleontology](http://www.blm.gov/paleontology).

#### *Drafting Information*

This rule reflects the efforts of staff in BLM, Reclamation, FWS, NPS, and OHA. This action is taken pursuant to delegated authority.

#### **List of Subjects**

##### *36 CFR Part 2*

Environmental protection, National parks, Reporting and recordkeeping requirements.

##### *43 CFR Part 49*

Casual collecting, Civil penalties, Collecting, Commercial value, Confidentiality, Criminal penalties,

Curation, Museums, Natural resources, Paleontological resources, Paleontology, Permits, Prohibited acts, Prohibitions, Public awareness, Public education, Recreation, Reporting and recordkeeping requirements, Repository, Research, Scientific principles, Scientific value.

##### *43 CFR Part 8360*

Penalties, Public lands, Recreation activities, Recreation and recreation areas.

##### *50 CFR Part 27*

Wildlife refuges.

For reasons stated in the preamble, the Department of the Interior amends title 36 of the CFR by amending part 2, title 43 of the CFR by adding part 49 and amending part 8360, and title 50 of the CFR by amending part 27, as set forth below:

#### **TITLE 36: PARKS, FORESTS, AND PUBLIC PROPERTY**

#### **PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION**

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 54 U.S.C. 100101, 100751, 320102.

■ 2. Amend § 2.1 by revising the note at the end of the section to read as follows:

##### **§ 2.1 Preservation of natural, cultural and archeological resources.**

\* \* \* \* \*

##### **Note 1 to § 2.1**

The Secretary’s regulations concerning archeological resources are found in 43 CFR part 3. The regulations concerning paleontological resources are found in 43 CFR part 49.

■ 3. Amend § 2.5 by revising the note at the end of the section to read as follows:

##### **§ 2.5 Research specimens.**

\* \* \* \* \*

##### **Note 1 to § 2.5**

The Secretary’s regulations on the preservation, use, and management of fish and wildlife are found in 43 CFR part 24. The regulations concerning archeological resources are found in 43 CFR part 3. The regulations concerning paleontological resources are found in 43 CFR part 49.

#### **TITLE 43: PUBLIC LANDS: INTERIOR**

#### **Subtitle A—Office of the Secretary of the Interior**

■ 4. Add part 49 to title 43 to read as follows:

## PART 49—PALEONTOLOGICAL RESOURCES PRESERVATION

### Subpart A—Preserving, Managing, and Protecting Paleontological Resources

Sec.

- 49.1 What does this part do?
- 49.5 What terms are used in this part?
- 49.10 Does this part affect existing authorities?
- 49.15 When does this part not apply?
- 49.20 Does this part create new rights or entitlements?
- 49.25 What information concerning the nature and specific location of paleontological resources is confidential?
- 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?
- 49.35 How will the bureaus foster public education and awareness?
- 49.40 May the bureaus restrict access to an area?

### Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals

- 49.100 When is a permit required to collect paleontological resources on Federal land?
- 49.105 Who can receive a permit?
- 49.110 What are permit applicant qualification requirements?
- 49.115 Where must a permit application be filed and what information must it include?
- 49.120 How will a bureau make a decision about a permit application?
- 49.125 What terms and conditions will a permit contain?
- 49.130 When and how may a permit be modified, suspended, revoked, or cancelled?
- 49.135 Can a permit-related decision be appealed?
- 49.140 What is the process for appealing a permit-related decision?
- 49.145 Has OMB approved the information collection provisions of this part?

### Subpart C—Management of Paleontological Resource Collections

- 49.200 Where are collections deposited?
- 49.205 What are the requirements for approving a repository to receive a collection?
- 49.210 What terms and conditions must agreements between the bureau and approved repository contain?
- 49.215 What are the standards for managing the collections?

### Subpart D—Prohibited Acts

- 49.300 What acts are prohibited?

### Subpart E—Criminal Penalties

- 49.400 What criminal penalties apply to violations of this part?

### Subpart F—Civil Penalties

- 49.500 When can the Federal land manager assess a civil penalty?
- 49.505 When and how does the Federal land manager serve a notice of violation?
- 49.510 What is included in the notice of violation?

- 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?
- 49.520 When will the Federal land manager issue a final assessment of civil penalty?
- 49.525 How will the Federal land manager calculate the amount of a proposed and final assessment of civil penalty?
- 49.530 How will the Federal land manager issue the final assessment of civil penalty?
- 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?
- 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?
- 49.545 What will be included in the administrative law judge's decision?
- 49.550 How can the administrative law judge's decision be appealed?
- 49.555 What procedures govern an appeal of an administrative law judge's decision?
- 49.560 When must the civil penalty be paid?
- 49.565 When may a person assessed a civil penalty seek judicial review?
- 49.570 What happens if a civil penalty is not paid on time?
- 49.575 How will collected civil penalties be used?

### Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

- 49.600 How is “scientific value” determined for criminal and civil penalties?
- 49.605 How is “commercial value” determined for criminal and civil penalties?
- 49.610 How is the “cost of response, restoration, and repair” determined for criminal and civil penalties?

### Subpart H—Forfeiture and Rewards

- 49.700 Will a violation lead to forfeiture of a paleontological resource?
- 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?

### Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands

- 49.800 Is casual collecting allowed on lands administered by NPS or FWS?
- 49.805 Where is casual collecting allowed?
- 49.810 What is casual collecting?

Authority: 16 U.S.C. 470aaa–aaa–11.

### Subpart A—Preserving, Managing, and Protecting Paleontological Resources

#### § 49.1 What does this part do?

This part:

- (a) Directs the Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) (collectively referred to as “the bureaus”) to preserve, manage, and

protect paleontological resources on Federal land using scientific principles and expertise;

(b) Coordinates paleontological resources management among the bureaus;

(c) Promotes public awareness; provides for collection under permit; clarifies that paleontological resources cannot be collected from Federal land for sale or purchase; establishes civil and criminal penalties; sets curation standards; and

(d) Authorizes casual collecting of common invertebrate and plant paleontological resources from certain BLM-administered land and certain Reclamation-administered land.

#### § 49.5 What terms are used in this part?

The terms used in this part have the following definitions.

*Act* means title VI, subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. 470aaa–470aaa–11).

*Ad Hoc Board* means an Ad Hoc Board of Appeals appointed by the Director, Office of Hearings and Appeals, Department of the Interior.

*Approved repository* means a Federal or non-Federal facility that provides for the curation of paleontological resources and that is approved by the Federal land manager to receive collections made under this part.

*Associated records* means original records or copies thereof, regardless of format, that include but are not limited to:

(1) Primary records relating to identification, evaluation, documentation, study, preservation, context, or recovery of a paleontological resource;

(2) Public records including, but not limited to, land status records, bureau reports, publications, court documents, and agreements; and

(3) Administrative records and reports generated during the permitting process that pertain to survey, excavation, or study of the paleontological resource.

*Bureau* means Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), or National Park Service (NPS).

*Collection* means paleontological resources that are removed from Federal land under the provisions of this part, and associated records.

*Consumptive analysis* means the alteration or destruction of a paleontological specimen or portion of a specimen for scientific research.

*Cost of response, restoration, and repair* means the costs to respond to a

violation of the provisions of this part or a permit issued under this part and the costs of restoration and repair of the paleontological resources or paleontological sites damaged as a result of the violation. Those costs are described in greater detail in § 49.610.

*Curation* means those activities

pertinent to management and preservation of a collection over the long term according to professional museum and archival practices, including at a minimum:

(1) Accessioning, cataloging, labeling, and inventorying a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection;

(6) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it; and

(7) Lending a collection, or parts thereof, for scientific, educational or preservation purposes.

*Day* means a 24-hour calendar day.

*DCHD* means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior.

*Department or DOI* means the Department of the Interior.

*Deposit* means placing a collection in an approved repository.

*Federal land* means land controlled or administered by the Secretary of the Interior, except for Indian land.

*Federal land manager* means the bureau personnel who implement the Act. Each bureau may have multiple Federal land managers. For paleontological resources from lands administered by BLM, “Federal land manager” is synonymous with “authorized officer.” Federal land managers draw upon appropriate scientific and technical expertise to make decisions and take actions.

*Fossilized* means evidence or remains of once-living organisms preserved by natural processes, such as burial in accumulated sediments, preserved in ice or amber, permineralized, or replaced by minerals, which may or may not alter the original organic content.

*Indian land* means land of federally recognized Indian Tribes or Indian individuals which is either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

*Nature* means features, characteristics, or attributes of the paleontological resource.

*OHA* means the Office of Hearings and Appeals, DOI.

*OHA Director* means the Director, Office of Hearings and Appeals, DOI.

*Paleontological resource* means any fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust, except for:

(1) Those that are found in an archaeological context and are an archaeological resource as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(2) “Cultural items,” as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); or

(3) Resources determined in writing by the Federal land manager to lack paleontological interest or not provide information about the history of life on earth, based on scientific and other management considerations.

*Paleontological site* means a locality, location, or area where a paleontological resource is found; the site can be relatively small or large.

*Preparation* means separation of paleontological resources from entombing matrix.

*Specific location* means any description or depiction of a place in such detail that it would allow a person to find a paleontological resource or the site from which it was collected.

*State* means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

*Working collection* means collections that, while still Federal property, are not intended for long-term preservation and care as museum property since they do not further paleontological knowledge, public education, or management of paleontological resources. Working collections are intended for use during education or ongoing research and may be consumed during the analysis process according to bureau policy. Some specimens and items may subsequently be designated museum property. Working collections may be discarded when it is determined there is no longer a need for the collection for future research or education or upon completion of the ongoing research according to standards set in bureau policy.

#### **§ 49.10 Does this part affect existing authorities?**

No. This part preserves the authority of the Secretary of the Interior and the

bureaus under this and other laws and regulations to preserve, manage, and protect paleontological resources on Federal land.

#### **§ 49.15 When does this part not apply?**

(a) The regulations in this part do not invalidate, modify, or impose additional restrictions or permitting requirements on mineral, reclamation, or related multiple-use activities which the Department or a bureau may authorize or for which permits may be issued under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws.

(b) The regulations in this part do not apply to Indian land.

(c) The regulations in this part do not apply to any land other than Federal land as defined in this part, or resources other than paleontological resources as defined in this part.

(d) On lands administered by BLM or Reclamation, the following are not subject to this part:

(1) Fossilized minerals, including coal, oil shale, bitumen, lignite, asphaltum, tar sands, and other economic minerals that are subject to existing mining or mineral laws and geological units and industrial minerals, including, but not limited to, phosphate, limestone, diatomaceous earth, coquina, chalk beds, and paleosols. However, paleontological resources that occur within in these units may be subject to this part;

(2) Petrified wood, defined at 30 U.S.C. 611.

(3) Conodonts.

#### **§ 49.20 Does this part create new rights or entitlements?**

(a) This part does not create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity.

(b) Only an officer or employee of the United States acting in that capacity has standing to file a civil action in a court of the United States to enforce this part.

#### **§ 49.25 What information concerning the nature and specific location of paleontological resources is confidential?**

(a) Information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act and any other law unless the Federal land manager determines that the disclosure would:

(1) Further the purposes of the Act;

(2) Not create risk of harm to or theft or destruction of the resource or site containing the resource; and

(3) Be in accordance with other applicable laws.

(b) The Federal land manager may define bureau-specific confidentiality requirements that are consistent with paragraphs (a)(1) through (3) of this section.

(c) Information that is shared with a contractor, permittee, repository, or other partner in furtherance of the Act is not considered an official public disclosure for purposes of the Freedom of Information Act.

#### **§ 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?**

(a) The bureaus will develop plans and procedures for the inventory and monitoring of paleontological resources on and from Federal land in accordance with applicable laws and regulations.

(b) The bureaus will preserve, manage, and protect paleontological resources on and from Federal land using scientific principles and expertise.

(c) Activities under paragraphs (a) and (b) of this section will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

#### **§ 49.35 How will the bureaus foster public education and awareness?**

The bureaus will establish programs to increase public awareness about the significance of paleontological resources on or from Federal land. This effort will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

#### **§ 49.40 May the bureaus restrict access to an area?**

(a) The Federal land manager may restrict access to an area or close areas to collection of paleontological resources to protect paleontological or other resources or to provide for public safety.

(b) The regulations in this part do not preclude the use of other authorities that provide for area restrictions or closures on Federal land.

### **Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals**

#### **§ 49.100 When is a permit required to collect paleontological resources on Federal land?**

(a) A permit is required for any person to collect paleontological resources, except as allowed in provisions in subpart I of this part.

(b) A permit may be required by a Federal land manager for paleontological research or paleontological consulting activities that do not involve collection.

(c) A permit is required for Federal Government personnel, agents, or contractors to collect paleontological resources unless the bureau authorizes the action by programmatic or other means.

#### **§ 49.105 Who can receive a permit?**

(a) Applicants who demonstrate that they meet the qualification requirements described in § 49.110, who provide a complete application as described in § 49.115, and whose proposed activity meets the issuance criteria described in § 49.120 may receive a permit.

(b) Persons who do not meet the qualification requirements described in § 49.110, who do not provide a complete application as described in § 49.115, or whose proposed activity does not meet the issuance criteria described in § 49.120 will not receive a permit. However, they can perform work under an issued permit when appropriately supervised by a permittee.

#### **§ 49.110 What are permit applicant qualification requirements?**

(a) Permit applicant qualification requirements include:

(1) A degree from an accredited institution in a field of study relevant to paleontology, or demonstration of progress toward an advanced degree from an accredited institution in a field of study relevant to paleontology, or demonstrated training and experience commensurate to the nature and scope of the proposed activities;

(2) Experience in collecting, analyzing, summarizing, and reporting paleontological data, and preparing collections for long-term care; and

(3) Experience in equipping, staffing, organizing, conducting, and supervising fieldwork similar to the type, nature, and scope of the project proposed in the application.

(b) Past performance by the applicant will be considered. Past performance includes compliance with previous permits, relevant civil or criminal violations, or current indictments or charges.

#### **§ 49.115 Where must a permit application be filed and what information must it include?**

(a) A permit applicant must submit an application to the bureau that administers the Federal land where the proposed activity would be conducted. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form and process, and respond to that bureau's requests for information in a timely manner.

(b) Required information includes:

(1) The applicant's name, affiliation, and contact information.

(2) A current resume for the applicant and all other persons who oversee work under the permit, and any additional information demonstrating that the applicant possesses the qualifications required by § 49.110.

(3) A description, proposed start and end dates, and maps and other location information for the proposed work.

(4) Purpose, methods, and need for the proposed work, a scope of work or research plan, duration of the proposed work, logistical information, description of any paleontological resource collections that may be made under the permit, description of any existing collections known to have originated in this area, timetable for transfer to the proposed repository, and any additional information that will help the federal land manager identify the extent, nature, and potential impacts of the proposal.

(5) Bonding information, if required by the bureau.

(6) Name, location, and contact information of a proposed repository that agrees to receive the collection made under the permit.

(7) Anticipated costs of the permitted activity, including paleontological resource preparation and curation, and identification of the persons or organizations that will be responsible for these costs if the permit is approved;

(8) List of the applicant's past permits and record of compliance and non-compliance.

(9) An explanation of how the proposed collection would further paleontological knowledge or public education, or management of paleontological resources.

#### **§ 49.120 How will a bureau make a decision about a permit application?**

(a) The Federal land manager will evaluate the permit application and analyze impacts in accordance with applicable laws, regulations, and policies.

(b) The Federal land manager may issue a permit upon determining that:

(1) The applicant possesses the qualifications required by § 49.110;

(2) The permitted activity and any collection that would be made under the proposed permit would further paleontological knowledge, public education, or management of paleontological resources;

(3) The permitted activity would be consistent with the purpose and management objectives defined for the Federal land;

(4) The permitted activity would be conducted in a manner that would

avoid or minimize adverse effects to significant natural or cultural resources; and

(5) An approved repository has confirmed in writing that it is willing to accept the collection in accordance with the terms and conditions in the permit.

**§ 49.125 What terms and conditions will a permit contain?**

(a) Permit terms and conditions will include but are not limited to:

(1) Permittee and the approved repository named in the permit must not release, disclose, or share information about the specific location of paleontological resources unless the Federal land manager determines that the release, disclosure, or sharing is consistent with applicable policy.

(2) Permittee is responsible for maintaining a safe and secure paleontological site and for protecting paleontological and other resources from harm resulting from the work under the permit. Permittee is responsible for the actions of all persons working under the permit or invited by permittee to the site.

(3) Permittee, or a designee approved by the Federal land manager and named on the permit, must be onsite at all times when fieldwork is in progress and have a copy of the signed permit on hand.

(4) Permittee must comply with all vehicle or access restrictions, safety or environmental restrictions, local safety conditions or restrictions, and applicable Federal, State, and local laws.

(5) Permittee must acknowledge that the geographic area within the scope of the permit may be subject to other uses, and will take steps to avoid or minimize potential conflicts with such uses.

(6) Permittee will record specific location according to bureau requirements or permit terms and conditions.

(7) Permittee must report suspected or apparent resource damage or theft of paleontological or other resources to the Federal land manager as soon as possible, but not to exceed 48 hours after learning of the suspected or apparent damage or theft.

(8) Permittee must safeguard all paleontological resources collected under the permit and related data from the time of initial recovery until the collection is deposited with the approved repository named in the permit.

(9) Permittee acknowledges that all paleontological resources collected under the permit are Federal property.

(10) Permittee must deposit the collection in the approved repository

named in the permit by the date specified in the permit and provide the bureau with a receipt for collections signed by an appropriate repository official who is not the permittee.

(11) A copy of the permit and other associated records must be kept with the collection during transport and provided to the approved repository named in the permit.

(12) If the permittee has not transferred the collection to the approved repository named in the permit by the date specified in the permit, the permittee must provide the Federal land manager a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

(13) Permittee is responsible for the costs of the permitted activity, including fieldwork, data analysis, specimen preparation, report preparation, and initial curation of the collection and its associated records unless otherwise addressed in a separate written document.

(14) Permittees must submit annual reports, other reports, and copies of publications resulting from the collections made under the permit to the Federal land manager in accordance with bureau format and deadlines.

(15) Permittee must acknowledge the permitting bureau and the approved repository named in the permit in any report, publication, paper, news article, film, television program, or other media resulting from the work performed under the permit.

(16) The permit cannot be transferred.

(b) A permittee must continue to comply with the permit's terms and conditions in the event of permit modification, suspension, cancellation, revocation, or expiration unless specified otherwise by the Federal land manager.

(c) The Federal land manager may include in the permit additional terms and conditions necessary to carry out the purposes of this part, including a bond where warranted.

(d) For activities approved on lands administered by BLM or Reclamation, the Federal land manager may provide permittees with a notice to proceed, which contains site-specific guidance and stipulations for the permittee.

(e) Persons who do not comply with the terms of a permit issued under this part may be subject to permit modification, suspension, revocation, and/or civil or criminal penalties.

**§ 49.130 When and how may a permit be modified, suspended, revoked, or cancelled?**

(a) *Modification.* The Federal land manager may modify a permit at the permittee's request; or when resource, safety, or other administrative or management reasons make permit modification appropriate; or when there is a violation or a potential violation of a term or condition of a permit issued under this part.

(b) *Suspension.* The Federal land manager may suspend for up to 45 days activities under the permit when resource, safety, or other administrative or management reasons make permit suspension appropriate, or when the permittee violates a term or condition of the permit. If the issue prompting suspension is not resolved within the 45-day period, the Federal land manager may modify, revoke, or cancel the permit as appropriate to the specific circumstance.

(c) *Revocation.* The Federal land manager may revoke a permit when the permittee violates a term or condition of a permit, is later found to be ineligible for the permit, or fails to take the actions necessary for ending a suspension. The Federal land manager will revoke a permit immediately if any person working under the authority of the permit is convicted of a criminal offense under this part or assessed a civil penalty under this part.

(d) *Cancellation.* The Federal land manager may cancel a permit when the permittee requests cancellation, or when resource, safety, or other administrative or management reasons make permit cancellation appropriate. Cancellation of a permit does not imply fault on the part of the permittee.

(e) *Notification of modification, suspension, revocation, or cancellation.* (1) The Federal land manager will notify the permittee of the modification, suspension, revocation, or cancellation verbally or in writing. The Federal land manager will, as soon as practicable, confirm a verbal notification with a written notification. A written notification will be served on the permittee by certified mail, return receipt requested, or another verifiable delivery method, and will explain the reason for the modification, suspension, revocation, or cancellation.

(2) In the case of a suspension, the written notification will also include the conditions or actions necessary for ending the suspension; the anticipated duration of the suspension or schedule for resolution of the conditions that led to the suspension; and a statement that the permit will be modified, revoked, or

cancelled if the conditions that led to the suspension are not resolved.

(3) The written notification will inform the permittee how to appeal the modification, revocation, suspension, or cancellation.

(f) A modification, suspension, revocation, or cancellation is in full force and effective immediately upon the permittee's receipt of the written notification of the modification, suspension, revocation, or cancellation.

#### **§ 49.135 Can a permit-related decision be appealed?**

Yes. Permit applicants and permittees may appeal the denial of a permit application, and the modification, suspension, revocation, or cancellation of an issued permit.

#### **§ 49.140 What is the process for appealing a permit-related decision?**

A permit-related decision may be appealed using processes defined by the issuing bureau.

(a) Permit-related decisions by BLM may be appealed to the Interior Board of Land Appeals under the process explained at 43 CFR 4.400 through 4.438.

(b) Permit-related decisions by FWS may be appealed under the process explained at 50 CFR 36.41(i).

(c) Permit-related decisions by Reclamation may be appealed under the process used for other types of scientific research and collecting permits issued by Reclamation, which will be specified in writing in the permit-related decision.

(d) Permit-related decisions by NPS may be reconsidered under the process used for other types of scientific research and collecting permits issued by NPS, which will be specified in writing in the permit-related decision.

#### **§ 49.145 Has OMB approved the information collection provisions of this part?**

BLM, Reclamation, NPS, and FWS use the information collected under this part to manage and protect paleontological resources on and from Federal land. The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this part and assigned OMB Control No. 1093-0008. OMB has approved the information collection requirements for the NPS Research Permit and Reporting System, which includes paleontological permits, and assigned OMB Control No. 1024-0236. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### **Subpart C—Management of Paleontological Resource Collections**

#### **§ 49.200 Where are collections deposited?**

(a) A collection from Federal land made pursuant to a permit issued under this part will be deposited in a repository approved to receive the collection.

(b) The curation of paleontological resources collected from Federal land before September 1, 2022 is governed by the terms and conditions of the original collection permit or agreement, rather than by this part.

(c) The Federal land manager, in coordination with the permittee and repository staff, will ensure that the specimens in the collection that further paleontological knowledge, public education, or management of paleontological resources are curated in the approved repository. Specimens that do not further paleontological knowledge, public education, or management of paleontological resources may be placed in working collections or disposed of as determined by the Federal land manager in coordination with appropriate subject matter experts.

#### **§ 49.205 What are the requirements for approving a repository to receive a collection?**

(a) The bureaus may approve a repository if:

(1) Repository has facilities and staff that provide curation as defined in this part;

(2) Repository has a scope of collections statement or similar policy document that demonstrates the repository's willingness and ability to curate Federal paleontological resources;

(3) Repository has access to paleontological and/or curatorial staff with adequate experience to successfully prepare and curate paleontological resource collections;

(4) Repository's past and current performance meets applicable departmental standards; and

(5) Repository will not release specific location data to the public except as consistent with § 49.25 or as provided in an agreement between the repository and the bureau.

(b) Once a repository is approved to receive a collection, it will remain approved to curate the collection unless the Federal land manager, after consultation with the permittee and the repository, determines that one or more of the criteria in paragraph (a) of this section is not satisfied. The Federal land manager must refer to Departmental guidance to address this situation.

#### **§ 49.210 What terms and conditions must agreements between the bureau and approved repository contain?**

(a) The Federal land manager will review existing agreements between the bureau and the approved repository to determine if these agreements adequately address the management of the collection. If adequate agreements do not already exist, the Federal land manager will work with the repository to develop a new agreement to cover this collection as well as other collections as appropriate.

(b) Agreements between the bureau and approved repository will contain the following information as deemed appropriate by the parties:

(1) Statement (updated as necessary) that identifies the collection(s) at the approved repository.

(2) Statement that asserts Federal ownership of the collection(s).

(3) Statement of work to be performed by the approved repository.

(4) Statement of the duties and responsibilities of the bureau and of the approved repository for the long-term care of the collection(s).

(5) Statement that the collections are available for scientific and educational uses and that the specific location data may be shared consistent with the Federal land manager's determination under § 49.25.

(6) Description of any special procedures or restrictions for access to or use of collections, consumptive analysis, or reproductions.

(7) Description of when and how the collection(s) may be loaned to other entities, including general parameters such as loan duration, purpose, responsibility, insurance, tracking, and packing/shipping materials.

(8) Statement describing the frequency, methods, and reporting process for inventories.

(9) Statement that all exhibits, publications, and studies of paleontological resources will acknowledge the bureau that administers the collection(s).

(10) Statement describing how copies of any publications or reports resulting from study of the collection(s) will be made available by the publication or report writers to the bureau.

(11) Statement describing how collection management records will be made available to the bureau that administers the collection(s).

(12) Statement that employees of the repository will work to preserve and protect specimens in their care using best professional practices, and will take no actions whereby any of the collection(s) shall or may be



encumbered, seized, taken, sold, attached, lost, or stolen.

(13) Effective term of the agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement, including costs.

(14) Additional terms and conditions as needed to manage the collection(s).

(c) The agreement must be signed by an authorized representative of the approved repository and the Federal land manager.

#### **§ 49.215 What are the standards for managing the collections?**

(a) Each approved repository must:

(1) Curate museum collections as defined at § 49.5 and consistent with any agreements between the bureau and the approved repository;

(2) Obtain approval of the Federal land manager before conducting or allowing reproduction or consumptive analysis of part or all of the collection, unless this topic is addressed in an agreement between the bureau and the approved repository;

(3) Conduct inventories consistent with Departmental and bureau museum management standards, and report the results to the bureau.

(b) The Federal land manager, in coordination with the repository official and appropriate subject matter experts, may determine that specimens that are found to be redundant, lack adequate associated data, or otherwise are determined not to further paleontological knowledge, public education, or management of paleontological resources may be removed from museum collections and placed into working collections.

(c) The approved repository may charge reasonable fees, consistent with applicable law, to persons and/or institutions that deposit, use, or borrow specimens at that repository that were collected under this part. Fees may cover labor and material costs incurred by the repository for curating, handling, record keeping, and insuring the collection(s).

#### **Subpart D—Prohibited Acts**

##### **§ 49.300 What acts are prohibited?**

(a) A person may not:

(1) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on Federal land unless this activity is conducted in accordance with the Act and this part.

(2) Exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological

resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under Federal law, including the Act and this part.

(3) Sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

(4) Make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal land.

(b) A person may return to the Federal land manager paleontological resources collected or obtained in violation of the Act and this part without penalty if deemed appropriate by the Federal land manager.

#### **Subpart E—Criminal Penalties**

##### **§ 49.400 What criminal penalties apply to violations of this part?**

(a) Anyone who, on or after March 30, 2009, knowingly commits or counsels, procures, solicits, or employs another person to commit a prohibited act identified in subpart D of this part will, upon conviction, be assessed:

(1) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 5 years, or both, if the sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is more than \$500; or

(2) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 2 years, or both, if the sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is \$500 or less.

(b) Scientific and commercial values and the cost of response, restoration, and repair are determined in accordance with subpart G of this part.

(c) In the case of a second or subsequent violation by the same person, the amount of the penalties assessed under this subpart may be doubled.

(d) To the extent that a prohibited act under this subpart involves a violation of other applicable law, the violator may be subject to additional criminal penalties.

#### **Subpart F—Civil Penalties**

##### **§ 49.500 When can the Federal land manager assess a civil penalty?**

(a) The Federal land manager may assess a civil penalty upon any person who violates the provisions of this part or violates a permit issued under this part, in accordance with the process explained in this subpart.

(b) For purposes of this subpart, each violation is considered a separate offense.

##### **§ 49.505 When and how does the Federal land manager serve a notice of violation?**

When the Federal land manager believes that a person has committed a violation of this part, he or she may serve a notice of violation in person, by certified mail, return receipt requested, or other verifiable delivery method upon the person.

##### **§ 49.510 What is included in the notice of violation?**

A notice of violation will include:

(a) A concise statement of the facts believed to show a violation has occurred.

(b) A citation of the provisions of this part or a permit issued under this part alleged to have been violated.

(c) The amount of civil penalty proposed.

(d) Notification of the right to await the final assessment of civil penalty or to object to the notice of violation and proposed civil penalty, and the right to file a request for hearing of the final assessment of civil penalty. The notice must also inform the person of his or her right to seek judicial review upon the issuance of the final administrative order under this subpart.

(e) The name and contact information of the Federal land manager who is serving the notice of violation.

##### **§ 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?**

(a) *Filing objection.* A person served with a notice of violation and proposed civil penalty may file a written objection with the Federal land manager within 30 days of the date the notice was received.

(b) *Content of objection.* The objection must:

(1) Clearly and concisely state the reasons why the person believes that the person did not commit a violation and/or that the proposed civil penalty should be reduced or eliminated;

(2) Be accompanied by any documentation supporting the person's reasons for objecting; and

(3) Be signed by the person or the person's authorized representative.

(c) *Issuing determination.* The Federal land manager will issue a determination, served on the person by a verifiable delivery method, based on the information contained in the written objection or furnished upon further request to the Federal land manager.

(d) *Content of determination.* In the determination, the Federal land manager will:

(1) Sustain the objection and revoke the notice of violation and proposed civil penalty, if the Federal land manager determines that the information warrants a conclusion that no violation occurred;

(2) Deny the objection, if the Federal land manager determines that the information warrants a conclusion that a violation occurred and that the proposed civil penalty should not be reduced or eliminated; or

(3) Deny the objection in part and sustain it in part, if the Federal land manager determines that the information warrants a conclusion that a violation has occurred, but that the proposed civil penalty should be reduced or eliminated.

**§ 49.520 When will the Federal land manager issue a final assessment of civil penalty?**

The Federal land manager will issue a final assessment of civil penalty:

(a) If the person served with a notice of violation and proposed civil penalty does not file a timely objection; or

(b) If the person does file a timely objection that is denied in whole or in part under § 49.515.

**§ 49.525 How will the Federal land manager calculate the amount of a proposed and final assessment of civil penalty?**

(a) The Federal land manager will determine the amount of the civil penalty by taking into account:

(1) The scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resource involved;

(2) The cost of response, restoration, and repair of the paleontological resource and the paleontological site involved;

(3) Other factors that the Federal land manager considers relevant, such as prior violations or warnings or evidence of malicious intent;

(4) Information provided under § 49.515 or furnished to the Federal land manager upon his or her request; and

(5) Mitigating factors, which may include return of paleontological resources and whether the person will provide information that may assist the bureau.

(b) Scientific value, commercial value, and the cost of response, restoration, and repair of the paleontological resource and the paleontological site are determined in accordance with subpart G of this part.

(c) In the case of any subsequent violation by the same person, the Federal land manager may calculate a penalty in accordance with paragraph (a) of this section and double it for that subsequent violation.

(d) The maximum penalty assessed under paragraph (c) of this section for any one violation may not exceed the sum of:

(1) Two times the cost of response, restoration, and repair of paleontological resources and paleontological site damage; plus

(2) Two times the scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resources and paleontological sites destroyed or not salvaged.

(e) The final assessment of civil penalty may be equal to, less than, or more than the proposed civil penalty.

**§ 49.530 How will the Federal land manager issue the final assessment of civil penalty?**

(a) The Federal land manager will serve the final assessment of civil penalty by certified mail, return receipt requested, or other verifiable delivery method.

(b) The final assessment of civil penalty will include:

(1) The facts and conclusions that are the basis for the Federal land manager's determination that a violation occurred;

(2) The basis for the Federal land manager's determination of the amount of civil penalty assessed;

(3) Notification of the rights to accept the final assessment of civil penalty or, alternatively, to file a request for hearing on the final assessment with a Departmental Cases Hearings Division (DCHD) administrative law judge under § 49.535(a)(2); and

(4) A statement that the civil penalty must be paid within 30 days of the date that the final assessment of civil penalty is received, unless the person served with the final assessment of civil penalty files a request for hearing in accordance with this subpart and the procedures specified in the notice.

**§ 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?**

(a) *Response options.* A person who receives a final assessment of civil penalty may, within 30 days of the date the assessment is received, do one of the following:

(1) Accept the final assessment of civil penalty, either in writing, by payment of the final assessment, or by failing to timely file a request for hearing under paragraph (a)(2) of this section; or

(2) File a request for a hearing on the final assessment of civil penalty before a DCHD administrative law judge via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, deliver receipt requested, at DCHD's address specified in the final assessment of the civil penalty; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty.

(b) *Content of request for hearing.* A request for hearing must:

(1) Be signed by the person who receives the final assessment of civil penalty or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the final assessment of civil penalty being challenged.

(3) State clearly and concisely the reasons for challenging the final assessment, including the reasons why the person believes that he or she did not commit a violation and/or that the final assessment of civil penalty should be reduced or eliminated.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of any objection and supporting documentation filed under § 49.515(a); and

(iii) A copy of the final assessment of civil penalty.

(6) Contain a certificate acknowledging service of the request for hearing with the documentation listed in paragraph (b)(5) of this section to the Office of the Solicitor at the address identified in paragraph (c) of this section.

(c) *Service of request for hearing.* The person filing a request for hearing must simultaneously send a copy of the request and the accompanying documentation via certified mail, return receipt requested, or other verifiable delivery method to the Solicitor of the Department of the Interior at the address specified in the final assessment of civil penalty.

(d) *Dismissal of hearing request.* (1) If the request for hearing is not received by DCHD within 30 days of the date of receipt of the final assessment, the request for hearing will not be

considered and the hearing will be dismissed.

(2) The request for hearing may be dismissed for failing to meet any of the requirements of paragraph (c) of this section.

(e) *Waiver of hearing right.* A person who accepts the final assessment under paragraph (a)(1) of this section waives the right to a hearing.

**§ 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?**

(a) Upon receipt of a request for hearing under § 49.535(a)(2), DCHD will assign an administrative law judge to preside over the hearing process and issue a decision. DCHD will promptly notify the parties of the assignment. Thereafter, all pleadings, papers, and other documents in the hearing process must be filed directly with that judge, with copies served on the other party.

(b) An attorney from the Office of the Solicitor, DOI, will represent the bureau. The attorney will enter his or her appearance on behalf of the bureau and file all motions and correspondence between the bureau and the person who filed the request for hearing. Subsequently, any service upon the bureau must be made to the attorney.

(c) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A and B, and in 43 CFR 4.422 through 4.437 will apply to the hearing process under this subpart.

(d) The hearing will be conducted in accordance with 5 U.S.C. 554. The bureau will have the burden of proving by a preponderance of the evidence the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing and incorporation of the hearing transcript in the record, the administrative law judge will issue a written decision in accordance with § 49.545 and serve it on the parties.

**§ 49.545 What will be included in the administrative law judge's decision?**

(a) The administrative law judge's written decision will set forth:

- (1) The findings of fact and conclusions of law;
- (2) The reasons and bases for the findings; and
- (3) An assessment of the penalty, if any.

(b) The amount of any penalty assessed will:

- (1) Be determined in accordance with this subpart and subpart G of this part; and
- (2) Not be limited by the amount of the penalty assessed by the Federal land

manager under § 49.525 or by any offer of mitigation or remission previously made.

(c) The administrative law judge's decision will become effective 31 days from the date of the written decision unless a timely appeal of the decision is filed under § 49.550.

**§ 49.550 How can the administrative law judge's decision be appealed?**

(a) *Filing appeal.* Within 30 days of the date of the administrative law judge's decision, either party to the hearing process (the person who filed the request for hearing or the bureau) may appeal the administrative law judge's decision to the OHA Director by filing a notice of appeal via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, delivery receipt requested, to the OHA Director's address specified in the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

(b) *Content of notice of appeal.* The notice of appeal must:

(1) Be signed by the person filing the appeal or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the administrative law judge's decision being appealed, including the DCHD docket number.

(3) State clearly and concisely the reasons for challenging the decision, including:

(i) The reasons why the person believes that he or she did not commit a violation or that the assessed civil penalty should be reduced or eliminated; and

(ii) A concise but complete statement of the facts relied upon to challenge the decision.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

- (i) A copy of the notice of violation and proposed civil penalty;
- (ii) A copy of the final assessment of civil penalty; and
- (iii) A copy of the administrative law judge's decision.

(6) Contain a certificate acknowledging service of the notice with the documentation listed in paragraph (b)(5) of this section on the other party to the hearing process in accordance with paragraph (c)(1) of this section.

(c) *Service.* The person filing a notice of appeal must simultaneously send a copy of:

(1) The notice and the accompanying documentation to the other party to the hearing process via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to the other party's address listed on the administrative law judge's decision; or

(ii) Electronic means, if the other party has previously consented to that electronic means, in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision; and

(2) The notice to DCHD via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to DCHD's address listed on the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

(d) *Dismissal of appeal.* If the notice of appeal is not received by the OHA Director within 30 days of the date of the administrative law judge's decision, the notice of appeal will not be considered and the appeal will be dismissed.

(e) *Stay of payment deadline.* If the administrative law judge's decision is appealed to the OHA Director, the deadline for payment of the penalty will be stayed pending resolution of the appeal.

**§ 49.555 What procedures govern an appeal of an administrative law judge's decision?**

(a) Upon receipt of a notice of appeal filed under § 49.550(a), the OHA Director will appoint an Ad Hoc Board of Appeals to consider the appeal and issue a decision thereon.

(b) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A, B, and G, will apply to the appeal proceedings under § 49.550.

**§ 49.560 When must the civil penalty be paid?**

A person assessed a civil penalty has 30 days from the date of the final administrative decision in which to make full payment of the civil penalty, or agree to a payment schedule. For the purposes of this subpart, the final administrative decision is:

(a) The final assessment of civil penalty if the person served with the final assessment does not file a timely request for hearing under § 49.535(a)(2).

(b) The administrative law judge's decision on the request for hearing if a timely appeal to the OHA Director is not filed under § 49.550(a); or

(c) The decision of the Ad Hoc Board of Appeals if a timely appeal of the administrative law judge's decision was filed under § 49.550(a).

**§ 49.565 When may a person assessed a civil penalty seek judicial review?**

A person may file a petition for judicial review in the United States District Court for the District of Columbia or in the district where the violation occurred, within 30 days of the decision of the Ad Hoc Board of Appeals. For purposes of the Act and this part, that decision will be considered a final administrative order. The deadline for payment of the civil penalty will be stayed pending resolution of the judicial review.

**§ 49.570 What happens if a civil penalty is not paid on time?**

(a) If the civil penalty is not paid by the required deadlines, the United States may take action to collect the penalty assessed plus interest, attorneys' fees, and collection costs.

(b) Failure to pay a civil penalty assessed under this subpart is a debt to the United States.

(c) Failure to pay a civil penalty assessed under this subpart may prevent a person from obtaining a future authorization for activities related to paleontological resources on Federal land as well as receiving other future Federal funding or assistance.

(d) By assessing a civil penalty under this subpart, the United States does not waive the right to pursue other legal or administrative remedies.

**§ 49.575 How will collected civil penalties be used?**

Civil penalties collected under this subpart are available without further appropriation to the bureau that administers the Federal land or paleontological resources that were the subject of the violation, and may be used only to:

(a) Protect, restore, repair, prepare, and curate the paleontological resources and sites that were the subject of the action, and to protect, monitor, and study the resources and sites;

(b) Provide educational materials to the public about paleontological resources, paleontological sites, or resource protection; or

(c) Pay rewards under subpart H of this part.

**Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair**

**§ 49.600 How is “scientific value” determined for criminal and civil penalties?**

In determining a criminal or civil penalty, the scientific value of a

paleontological resource will be based on the value of the scientific and educational information associated with the resource. This value is the estimated costs of obtaining the scientific and educational information from the disturbed paleontological resource or site if the prohibited act had not occurred. These costs may include, but are not limited to:

- (a) Research design development;
- (b) Fieldwork;
- (c) Preparation of the paleontological specimen;
- (d) Stabilization of the paleontological site;
- (e) Scientific analysis;
- (f) Curation;
- (g) Preparation and production of reports or educational materials; and
- (h) Lost visitor services or experience.

**§ 49.605 How is “commercial value” determined for criminal and civil penalties?**

In determining a criminal or civil penalty, the commercial value of a paleontological resource will be based on comparable sales information, appraisals, current market value, or other information for comparable resources. If there is no comparable sales information, appraisal, market value, or other information, the Federal land manager will determine the commercial value of the paleontological resource using other values such as scientific value under § 49.600 or the cost of response, restoration, and repair of the paleontological resource and/or paleontological site under § 49.610.

**§ 49.610 How is the “cost of response, restoration, and repair” determined for criminal and civil penalties?**

In determining a criminal or civil penalty, the cost of response, restoration, and repair of a paleontological resource and/or paleontological site will include, but not be limited to, the costs of:

- (a) Law enforcement investigations;
- (b) Immediate stabilization of the resource and the site;
- (c) Response, restoration, and repair, including, but not limited to, reconstructing or stabilizing the resource or site, salvaging the resource or site, erecting physical barriers or other protective devices or signs to protect the site, and monitoring the site;
- (d) Preparation of the paleontological specimen;
- (e) Storage and curation of the resources; and
- (f) Reporting upon the above activities.

**Subpart H—Forfeiture and Rewards**

**§ 49.700 Will a violation lead to forfeiture of a paleontological resource?**

(a) A paleontological resource related to a violation under this part is subject to forfeiture.

(b) The bureau may either deposit forfeited resources into an approved repository, or transfer or assign administration of the forfeited resources to Federal or non-Federal institutions to be used for scientific or educational purposes.

**§ 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?**

(a) The bureau may pay a reward to the person or persons furnishing information leading to a finding of civil violation or criminal conviction under this part.

(b) The reward may be no more than half of the penalties collected. If several persons provide the information, the bureau may divide the reward among them.

(c) The funds for the reward may come from the penalties collected or from appropriated funds.

(d) An officer or employee of Federal, State, or local government who furnishes information or renders service in the performance of official duties is not eligible for a reward under this section.

**Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

**§ 49.800 Is casual collecting allowed on lands administered by NPS or FWS?**

No. Casual collecting of paleontological resources is not allowed on lands administered by NPS or FWS. On those lands, collecting any paleontological resource must be conducted in accordance with a permit as described in subpart B of this part.

**§ 49.805 Where is casual collecting allowed?**

(a) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by BLM, except on BLM-administered land that is closed to casual collecting in accordance with this part, other statutes, executive orders, regulations, proclamations, or land use plans.

(b) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by Reclamation only in locations where the bureau has established a special use area for casual

collecting using processes defined in 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies. Casual collecting is prohibited on Reclamation project land that is administered by NPS or FWS.

(c) Persons interested in casual collecting are responsible for learning which bureau manages the land where they would like to collect paleontological resources, learning if the land is open to casual collecting, and obtaining information about the managing bureau's casual collecting procedures.

#### **§ 49.810 What is casual collecting?**

(a) Casual collecting means the collecting without a permit of a reasonable amount of common invertebrate or plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth's surface or paleontological or other resources.

(1) *Common non-vertebrate paleontological resources* means common invertebrate or plant paleontological resources.

(2) *Reasonable amount* means a maximum of 25 pounds of common non-vertebrate paleontological resources per day per person. Where the common non-vertebrate paleontological resources are embedded in rock, the collector, using non-motorized hand tools, may remove a slab or cobble of rock that exceeds 25 pounds in order to preserve the integrity of the embedded specimen.

(3) *Negligible disturbance* means little or no change to the surface of the land and minimal or no effect to natural and other resources.

(4) *Non-commercial personal use* means a use other than for purchase, sale, financial gain, or research.

(5) *Non-powered hand tools* means tools that do not use or are not operated by a motor, engine, or other mechanized power source, and that can be hand-carried by one person.

(b) In order to preserve paleontological or other resources, or for

other management reasons, the Federal land manager may establish area-specific limits on casual collecting, including, but not limited to, restricting the weight of common non-vertebrate paleontological resources; limiting the depth of disturbance; establishing dates or locations for collecting; or establishing what paleontological resources in a specific area are not common.

(c) In consultation with knowledgeable paleontologists, the Federal land manager will determine which non-vertebrate paleontological resources are scientifically rare or unique and are therefore not common.

(d) Collecting common non-vertebrate paleontological resources inconsistent with this subpart is a prohibited act and may result in civil or criminal penalties.

### **Subtitle B—Regulations Relating to Public Lands**

#### **SUBCHAPTER H—RECREATION PROGRAMS**

#### **PART 8360—VISITOR SERVICES**

■ 5. Revise the authority citation for part 8360 to read as follows:

**Authority:** 16 U.S.C. 470aaa, *et seq.*; 670, *et seq.*; 877, *et seq.*; 1241, *et seq.*; and 1281c; and 43 U.S.C. 315a and 1701 *et seq.*

■ 6. Revise § 8360.0–3 to read as follows:

#### **§ 8360.0–3 Authority.**

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877, *et seq.*), the National Trails System Act (16 U.S.C. 1241, *et seq.*), and the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*).

■ 7. Amend § 8365.1–5 by revising paragraph (b) to read as follows:

#### **§ 8365.1–5 Property and resources.**

\* \* \* \* \*

(b) Except on developed recreation sites and areas, or where otherwise prohibited and posted, it is permissible to collect from the public lands reasonable amounts of the following for noncommercial purposes:

(1) Commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves;

(2) Nonrenewable resources such as rocks, mineral specimens, and semiprecious gemstones;

(3) Petrified wood as provided under subpart 3622 of this title;

(4) Mineral materials as provided under subpart 3604 of this title;

(5) Forest products for use in campfires on the public lands. Other collection of forest products shall be in accordance with the provisions of part 5500 of this title; and

(6) Common invertebrate and plant paleontological resources as provided under part 49 of this title.

\* \* \* \* \*

### **TITLE 50—WILDLIFE AND FISHERIES**

#### **PART 27—PROHIBITED ACTS**

■ 8. The authority citation for part 27 continues to read as follows:

**Authority:** 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 460l–6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

■ 9. Amend § 27.63 by adding paragraph (c) to read as follows:

#### **§ 27.63 Search for and removal of other valued objects.**

\* \* \* \* \*

(c) Permits are required for the collection of paleontological resources on national wildlife refuges in accordance with the provisions of 43 CFR part 49.

**Joan M. Mooney,**

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